
(1987) 07 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 514 of 1980 (R)

Ganga Ho

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-1987

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 1
Evidence Act, 1872 — Section 114

Citation : AIR 1988 Patna 287 : (1988) PLJR 39

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : V.P. Sinha, for the Appellant; Jaya Roy, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ petition the petitioner challenges the orders passed by the respondent Nos. 2 and 3 as contained in Annexures 2 and 1 to the writ petition whereby and whereunder they upheld an award given by the panches in terms of the provisions of the Wilkinson's Rules.

2. The facts of the case lie in a very narrow compass and need not be stated in details.

3. Suffice is to say that the respondents Nos. 4 to 6 filed a suit as against the petitioner claiming inter alia the following reliefs : --

(a) For a declaration of their absolute right, title and interest in the lands mentioned in the Schedule B of the plaint and that the defendants have absolutely no right over any part of the same and for confirmation of the possession of the plaintiffs in respect of the lands of the Schedule. That in the alternative, if the plaintiffs are found out of possession in the mean time from any part of the suit land, for delivery of possession of the same by evicting the defendants therefrom.

(b) For a declaration of the right, title and interest of the plaintiffs in Schedule C lands and that the defendants have got no subsisting right, therein and for confirmation of possession of the plaintiffs in respect of these lands and in the alternative if the plaintiffs are found out of possession, for delivery of possession of the same by evicting the defendants therefrom.

(c) For costs of this suit.

(d) For any other relief or reliefs that the plaintiffs are entitled to.

4. The facts of the case are not very much in dispute. The genealogical table appended to the plaint stands admitted by the petitioner and is reproduced at page 5, para 3 of the writ petition, wherefrom it appears that one Singrai Ho was the original owner of the lands in question. The genealogical table however is as follows : --

Singrai Ho		_____			
		Burju Ho	Ganga Ho	Baya Ho	Buiyan Ho
		Hari Ho		_____	
_____		_____			
		Rugdu Ho	Salika Ho	Mangal Singh	
(Principal	Respondent	Nos.	4,5,6)		_____

Ganga Ho	Ram	Jugal Ho		(Proforma	Respondents
_____				Bugan Ho	Gomeya
Megeya Ho	Burju Ho		Ganga Ho	(Petitioner)	

5. The plaintiffs filed the aforementioned suit on the ground that during the lifetime of Singrai Ho there was a family arrangement/partition with regards to the properties involved in this suit and other properties. It may be mentioned that the said properties have been described in Schedules B and C appended to the plaint. It is an admitted case of the parties that whereas the properties as described in Schedule B appended to the plaint were recorded in the survey settlement record of right in the names of Bu"iyan Ho and Hari Ho the predecessor of the plaintiffs, the properties described in Schedule C of the plaint were recorded in the names of Burju Ho, Ganga Ho and Baya Ho.

6. In the aforementioned partition/family arrangement the properties which were situated in the district of Singhbhum viz those described in the Schedules B and C to the plaint were allotted to the share of Buiyan Ho and Hari Ho whereas the other three brothers, namely, Burju Ho, Ganga Ho and Baya Ho were allotted the properties of the family which were situated in the State of Orissa.

7. The aforementioned suit was referred to panches by the respondent No. 3 in terms of the provisions of Rule 20 of the Wilkinson's Rules. The panches submitted their award vide Annexure-3 to the writ petition wherein it was held that the plaintiffs' suit is fit to be decreed. It may be mentioned here that the award of the panches was a unanimous one.

8. The petitioners filed an objection before the respondent No. 3 who by the

aforementioned order (Annexure-2) to the writ petition, rejected the said objection and accepted the award submitted by the panches. An appeal was preferred by the petitioners before the respondent No. 2 which was dismissed by an order which is contained in Annexure-1 to the writ petition.

9. Mr. V.P. Singh, learned counsel appearing on behalf of the petitioners raised a short question for consideration of this court. He submitted that the respondent Nos. 1 and 3 ought not to have accepted the award submitted by the panches as the said award was against the provisions of the common law. He submitted that common law customary law of the community have been completely ignored by the panches while making the aforementioned award. According to him customary law of the Ho Community and as stated in paragraph 9(2) of the writ petition is as follows : --

"The joint family system of the Ho resembles the Hindu system. In the life of the father, the sons do not generally separate from him in mess and property. Sons with their wives and children live under the paternal roof. They all join hands in cultivating the family fields, have their meals cooked in the same family hearth, and bring even separate earnings, if any, to the common family fund. If a member of the family goes away elsewhere he does not lose his right to his proper share in the ancestral lands. The father is regarded as having almost absolute control over the family property. The sons partition the lands and get their shares only after the death of the father. If the father dies without any son leaving behind his widowed mother, widow without any issue or widow with daughters only or unmarried sisters or daughters, each of them is allowed lifetime interest in the property for their maintenance, but they do not have any authority to sell the landed property. In this particular case, the petitioner has all the rights to inherit the property which is in the share of his father and grand-father and Buyan Ho. brother of his grand-father. The petitioner's father always associated himself in the development of the lands of Buyan Ho. The panchayat have given their Award against the Customary Law and their Award, subsequent orders of the Additional Deputy Commissioner and the Commissioner ought to be set aside."

10. He therefore submitted that only because the three brothers left the district of Singhbhum did not mean that they had no share in the property. He further submitted that in any event after the death of Buyan Ho which allegedly took place in the year 1923 i.e. six years after the final publication of the survey settlement record of right, his interest in the property was inherited by all the surviving brothers, including the predecessor in interest of the petitioner and as such the petitioner had some interest in the property. Mr. Singh, therefore, submitted that panches committed an error of law on the face of the record in holding that the suit of the plaintiffs should be decreed. Mr. Singh further submits that consequently orders as contained in Annexures 2 and 1 passed by the respondent Nos. 3 and 2 respectively are also bad in law inasmuch as this aspect of the matter has not been taken into consideration by them at all. When

questioned Mr. Singh failed to demonstrate the correctness of the customary law as alleged in para 9(2) of the writ petition on the basis of any authority or any decision. Mr. Singh except pointing out to the aforementioned statement in the writ petition could not show as to what is the customary law of inheritance in respect of the Ho community. It has therefore not been established by the petitioner that the customary law governing the parties is what has been stated in the aforementioned para of the writ petition.

11. Mrs. Roy learned counsel appearing on behalf of the respondent Nos. 4 to 6 drew my attention to the award of the panches as contained in Annexure-3 to the writ petition as also the orders passed by the respondent Nos. 3 and 2 as contained in Annexures 2 and 1 to the writ petition wherefrom it appears that a partition/family arrangement amongst the Ho community during the lifetime of the father is permissible. The panches while passing the award and as contained in Annexure-3 to the writ petition found that there had in fact been a partition, family arrangement amongst the five brothers as a result whereof the properties situated in the district of Singhbhum were allotted to shares of the predecessors in interest of the plaintiffs whereas other properties situated in the State of Orissa were allotted to the share of the predecessors in interest of the petitioner. In view of the fact that such a partition took place as has been found by the panches and further in view of the fact that such partition/family arrangement is permissible under law. I do not find any infirmity in the award with regards to that aspect of the matter.

12. So far as the second submission of Sri Singh is concerned, the same also appears to be without any substance.

13. The law of inheritance amongst the Oraon's find place in the famous and authoritative Book of S. Roy in Oraon's of Chotanagpur wherein it has been mentioned as follows : --

"The brother of the deceased in such a case are entitled to equal shares. If, however, the deceased owner lived joint in mess and property with one or more brothers and separate from his father, such brother or brothers succeed to the property in preference to the separated father."

14. From the Chotanagpur Tenancy Act. 1908 written by Sri B.N, Sinha and Sri S.K. Chatopadhyay wherein customary laws of the tribals have been mentioned, it appears that law of Oraon and Munda community in the matter of inheritance is akin to each other. In the Singhbhum District Gazetteer at page 239 it has been stated the origin of Ho and Munda is the same community.

15. Mrs. Roy, therefore, submits that the law of inheritance applicable to the Oraon community would also be applicable to the Ho community. She therefore submits that in view of the fact that Hari Ho and Buiyan Ho after partition/family arrangement were living jointly, the right, title and interest of the property of Buiyan Ho would devolve upon Hari Ho after this death. The submission of Mrs. Roy appears to be correct.

16. Apart from the aforementioned fact from a perusal of Rule 20 of the Wilkinson's Rules it would appear that 3 or 5 panches constituting the panchayat are to be selected by the Agents or Assistants of the Governor General in Council from amongst the persons most conversant with the matter at issue. There is a presumption in law that the judicial and official acts have been performed in a regular manner. Therefore a presumption can be raised that the panches appointed by the respondent No. 3 were most conversant with the matter at issue which includes the customary law of inheritance in respect of the Ho community. There is, therefore, no reason to come to conclusion that the panches have committed an error in giving their award in favour of the respondents particularly in view of the fact that the petitioner has not been able to point out as to what is the customary law of inheritance governing the parties to the suit.

17. In the circumstances of the case I find no infirmity in the orders as contained in Annexures 1 and 2 to the writ petition. This writ petition is, therefore disposed of but in the circumstances of the case there will be however no order as to costs.