

(2011) 11 JH CK 0008
In the Jharkhand High Court
Case No : M. A. No. 326 of 2007

Ghanshyam Rai and Others

APPELLANT

Vs

Jitan Murmu and Others

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46(3A), 72

Citation : (2012) 4 JCR 352 : (2012) 3 JLJR 103

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant; Rahul Gupta, for the Respondent

Judgement

Narendra Nath Tiwari

1. This miscellaneous appeal has been preferred against the judgment and order of remand passed by learned Additional District Judge, F.T.C-I, Giridih in Title Appeal No. 4/02. The appellants are the defendants. The plaintiffs-respondents had filed suit in the Court of the Munsiff, Giridih being Title Suit No. 178/1992 seeking declaration of their right title and interest over the suit land and for recovery of their possession.

2. The suit land appertains to Khata Nos. 3 & 4, Mouza - Kari, P.S - Kharagdiha, District-Giridih.

3. The plaintiffs' case, in brief, is that they are "Santhal" by caste and the members of Scheduled Tribe. The plaintiffs are the descendants of Bhikho Manjhi, Late Sona Manjhi and Late Kandana Manjhi, who were recorded as Bhumidhar in the survey record of rights. In the past, the plaintiffs' ancestors all along had paid rent of the said land and obtained receipts thereof. After the death of their father, the plaintiffs have been paying rent of the said land to the Government and have been getting rent receipts. During life time, the said recorded tenant had given some land to Dar-Raiyat Panchu Turi. The details of the land have been given in Schedule "C" property. The said Panchu Turi was

issueless. When he became old and unable to cultivate the land, the defendant No. 1 started cultivating the land of Panchu Turi on Adh-Bataie (share cropper) and started giving half of the produce of the crops to Panchu Turi. After the death of Panchu Turi, land of the said Dar-Raiyati Khata reverted to the plaintiffs. However, the defendant Nos. 1-7, who are rich and powerful persons, started cultivating the said land forcibly and deprived the plaintiffs of their right of ownership and possession over the land of Schedule C that gave rise to the cause of action for the suit.

4. The defendants contested the suit by filing a joint written statement. They took several legal pleas and claimed that the suit is not maintainable and that the genealogy is also incorrect. They stated that Panchu Turi (recorded Dar- Raiyat) surrendered his right to Raiyats who came in possession. The plaintiffs never came in possession. The allegation of their dispossession is imaginary. Subsequently, the land was settled in favour of the defendants and they were put in possession of the suit land. The land of Khata No. 4 of Mouza - Kari was recorded in the name of Bhikho Manjhi, Kandana Manjhi and Sona Manjhi. Sona Manjhi died issueless. Bhikho Manjhi and Kandana Manjhi came in possession over the land of the said Khata. Kandana Manjhi died leaving behind his only son Barku Manjhi. The said Bhikho Manjhi and Barku Manjhi came in possession of the land of the said Khata. They surrendered Plot No. 127 of Khata No. 4 measuring an area of 1.18 Acres along with other lands to the ex-landlord Tikait Jagdish Narayan Singh by virtue of registered deed of surrender dated 6.7.1932 and deliver possession of the said land. Subsequently, the ex-landlord settled the said land with Chaman Gope, son of Chuto Gope of Village - Ghutia by -virtue of a Hukumnama. The said Chaman Gope died leaving behind his five sons, who are the defendant Nos. 2-6. The said defendants inherited the suit land and came in possession of the same. The defendants, thereafter, improved the said land and converted the same into Class-I paddy land. They had paid rent to the ex-landlord and now they have been paying rent to the State. Akla Manjhi, father of the plaintiff Nos. 4 & 5 filed Restoration Case No. 193/1973-74 in the Court of the L.R.D.C, Giridih, but the same was dismissed by order dated 16.7.1974. The said Bhikho Manjhi and co- sharers sold the land of other plots of Khata No. 4 to the defendant No. 1 by virtue of registered sale deed dated 14.5.1947 and put him in possession thereof. The defendant No. 1 got his name mutated in the office of the ex-landlord and paid rent and has been getting rent receipts. The defendant No. 1 then constructed residential house over a portion of the suit land and planted several trees. The defendant No. 1 and his family members also improved the remaining lands and converted the same into paddy growing lands and Ban lands. The defendant No. 1 sold 19 Decimals of the purchased land to one Sona Devi, wife of Chhotelal Yadav and Sugiya Devi, wife of Khemchand Yadav by virtue of registered sale deed dated 19.6.1976. The said purchasers are in possession of the said land. The defendant No. 1 also sold the lands to other persons and the purchasers are in possession. The defendants and the purchasers are in peaceful physical possession of the lands to the notice and

knowledge of the plaintiffs and all concerned for more than 12 years. They have perfected their title even by adverse possession over the Schedule "C" land. The plaintiffs have absolutely no right, title and interest over the suit land. The suit is frivolous and the same is fit to be dismissed.

5. In the Trial Court though the defendant No. 7 did not appear, service of summons was found sufficient and the suit was proceeded ex parte against him.

6. Learned Trial Court, on the said pleadings of the parties, framed several issues. Both the parties led their evidences, oral and documentary.

7. Learned Trial Court decided Issue Nos. 1-3 in favour of the plaintiffs, but decided Issue Nos. 5-8 against the plaintiffs and the suit was dismissed.

8. The plaintiffs then filed appeal against the said judgment and decree of learned Trial Court in the Court of learned District Judge, Giridih being Title Appeal No. 4/02.

9. The said appeal was finally Heard and decided by learned Additional District Judge, F.T.C-L Giridih. 1

10. Learned lower appellate Court heard the parties and perused the judgment and decree of learned Trial Court and came to the finding that learned Trial Court did not consider the provisions of Chotanagpur Tenancy Act and has recorded erroneous findings almost on all the issues. Learned Trial Court has not given any finding as to whether the suit is barred u/s 46(3-A) of the Chotanagpur Tenancy Act and that he has not noticed and discussed the provisions of Section 72 of the Chotanagpur Tenancy Act which deals with surrender of land by Raiyats. According to learned lower appellate Court, the findings recorded by learned Trial Court are erroneous and contradictory. In view thereof, learned lower appellate Court allowed the appeal and remanded the case to learned Trial Court for fresh hearing and deciding all the issues afresh.

11. In this appeal, the said judgment and decree of learned lower appellate Court has been assailed by the appellants on the ground that learned lower appellate Court has committed error in remanding the matter to learned Trial Court for hearing and deciding the same afresh.

12. Mr. V. Shivnath, learned Sr. counsel appearing on behalf of the appellants, submitted that if learned lower appellate Court was of the opinion that some issues ought to have been framed and answered by learned Trial Court he could have framed specific issues and referred the same for trial to learned Trial Court keeping the appeal pending before him. Learned counsel submitted that if learned lower appellate Court was of the view that Trial Court has not taken into consideration the relevant provisions of Sections 46(3-A) & 72 of the Chotanagpur Tenancy Act he could have considered the same on the basis of the facts, evidences and materials on record and he should have given his findings and decided the appeal finally. Learned counsel further submitted that remand in the instant case is futile exercise and is wholly unwarranted. The impugned

judgment and order of learned lower appellate Court is illegal and unsustainable.

13. Learned counsel appearing on the behalf of the respondents, on the other hand, submitted that the judgment and decree of learned Trial Court was wholly erroneous and unsustainable, as several issues were decided against the plaintiffs without properly considering the relevant provisions of law. Learned Trial Court had framed specific issues regarding the validity of the alleged surrender by the recorded tenant, but the same was not examined in the light of the provisions of Section 72 of the Chotanagpur Tenancy Act which deals with surrender of holding by the Raiyat. Learned counsel submitted that if the surrender is tested in the light of the said legal provisions, the same would not stand and the entire position would change. Learned Trial Court has) dismissed the plaintiffs' suit on the basis of the said surrender and the alleged subsequent settlement in favour of the defendants, which is not legal. Once the said documents are held to be illegal and invalid, the right and title of the plaintiffs over the suit land would become unchallenged and the same have to be declared and held in favour of the plaintiffs. Learned counsel submitted that it was not a case in which any particular issue was to be framed and referred for decision to learned Trial Court, rather the entire decision requires a fresh consideration in the light of the legal provisions which were overlooked by learned Trial Court. Learned counsel further submitted that learned lower appellate Court has rightly noticed the legal infirmities in the impugned judgment and decree of learned Trial Court and has rightly set aside the same and allowed the appeal remanding the matter for fresh decision.

14. I have heard learned counsel for the parties and perused the impugned judgment and decree of (learned Courts below. I find that though learned Trial Court has decided all the issues including the issues of surrender and settlement, he has not discussed the legal provisions relating to surrender which is provided u/s 72 of the Chotanagpur Tenancy Act. Admittedly, the plaintiffs are "Santhal" and are the members of Scheduled Tribe. Surrender by such Raiyat is conditioned by the provisions of Section 72 of the Chotanagpur Tenancy Act. Learned Trial Court without considering and discussing the said provisions of the Chotanagpur Tenancy Act, has accepted the defendants' claim that the (and was validly surrendered by the recorded tenant and thereafter the same was validly settled with them. Learned lower appellate Court has rightly pointed out the said infirmity in the impugned judgment and decree of learned Trial Court. He also found other illegalities and has come to the conclusion that the entire suit has to be heard and decided afresh. For that purpose, he has remanded the matter to learned Trial Court. I find no infirmity and illegality in the impugned judgment and decree of learned lower appellate Court

15. This appeal is, accordingly, dismissed.

16. Before I part, I must point out that the impugned judgment and decree is of 10th May, 2007 and the matter was remanded to the Trial Court. There is no stay order in the appeal. Learned Munsif might have heard and disposed of the matter

till date. Neither party is in position to convey the present position in spite of time granted to them earlier for the said purpose. In view of the above, learned Trial Court is directed to dispose of the suit expeditiously without further delay, if not already disposed of.