

(2024) 01 JH CK 0029
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3225 Of 2008

Janardan Bhaiya

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 — Section 42

Citation : (2024) 01 JH CK 0029

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Nityanand Pd. Choudhary, Prashant Kuma Rai

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Petitioner is aggrieved by the order passed by the revisional Court of Commissioner, Santhal Pargana Division, Dumka in R.M.R .No.7/1984-85.
2. The petitioner claims the land measuring 2.97 acre of Plot No.236, Jamabandi No.7 of Mouza Shekhpura, P.S. Jamtara on the basis of Kurfanama settlement by recorded tenant Durga Charan Mandal and Kanhai Mandal in May, 1937 in favour of Bhubneshwar @ Bhuban Bhaiya, who happens to be the father of the petitioner. Other co-sharer of recorded Raiyat Laru Mandal also transferred 25 decimals of land out of this plot in favour of the father of the Petitioner.
3. After obtaining the Kurfa Patta, the father of the petitioner had built brick houses on the said land and have living there since 1937.
4. The predecessor in interest of the private respondents filed case under Section 42 of the Santhal Parganas Tenancy Act for ejectment of the Petitioner.
5. Learned Court of Sub Divisional Officer in R.E. Case No.35/1972-73 dismissed the case for ejectment on the ground that opposite party had constructed house over the said land and had also planted trees over it. In this view of matter, it

was held that the Kurfanama settlement cannot be suspected and disregarded.

6. The appeal was also dismissed by the Deputy Commissioner by recording a finding that it was the present Petitioner, who were in settled possession over the said land. The said house was constructed in the year

7. The orders rejecting petition for ejectment have been set aside by the impugned order on the ground that un-registered Kurfanama was not acceptable for transfer of immovable property. Furthermore, after the said settlement it never saw the light of day for getting the land mutated in the name of settlee.

8. Learned counsel on behalf of petitioner submits that under the Santhal Parganas Tenancy Act, there is no provision for mutation in favour of the settled Raiyat and they are continuing in physical possession of the land in question since 1937. The findings of fact of two Courts below have been reversed by the revisional order.

9. Learned counsel on behalf of private respondents submits that the basis of claim of the petitioner is un-registered Kurfanama which has never been brought on record and rent receipts are being issued in the name of private respondents. There is no material to show that any enquiry was held by the Sub Divisional Officer for returning finding of possession in favour of the petitioner.

10. In order to appreciate the arguments advanced on behalf of both the sides, it is desirable to extract Section 42 of the Santhal Pargana Tenancy Act, (for short 'SPT Act') under which ejectment has been ordered.

"Section 42- Ejectment of a person in unauthorized position of agricultural land – The Deputy Commissioner may at any time either of his own motion or on an application made to him, pass an order for ejectment of any person who has encroached upon, reclaimed, acquired, or come into possession of agricultural land in contravention of the provisions of this Act, or any law or anything having the force of law in the Santhal Parganas."

A plain reading of the above provision, leaves doubt that illegal possession is the subject matter of ejectment proceeding. Mere plea of possession cannot be a ground of continuing with it, unless the said possession has semblance of legal sanctity. A revenue Court cannot decide a possessory title on adverse possession or proprietary title, but there should be some material to show that possession was legal and Proceedee was not a rank trespasser. Revenue records are not documents of title, but they are some evidence of possession, which is looked into along with other evidence on record. Kurfa Patta is a type of agricultural lease, and like any lease of any immovable property, it need to be registered as per the provisions of the Registration Act. In agricultural lease, if settlement of land is followed by cogent evidence, then for limited purpose it has been accepted as an evidence of legal possession. Person in possession cannot be evicted, unless in a suit for title by a civil Court.

11. In the present case, private Respondents are heirs and successor of recorded

tenant. Claim of the petitioner rests on Kurfa Patta executed in the year 1937. This has however not corroborated by other documentary evidence, that petitioner came in possession of the said land on the basis of the said settlement, or it was a sham piece of document. Whenever a question on veracity of a document is raised, it is necessary to see if on the basis of the said document, land was duly mutated, revenue paid and right of possession or ownership was exercised on its basis. Absence of collateral evidence that the said document was ever acted upon, will render it a document of doubtful veracity. If unregistered documents, without any other supporting document of possession are accepted as documents of transfer of title, then such documents can be used to justify illegal possession. In the present case, there is no evidence to the effect that the said settlement, was followed by mutation in favour of the petitioner, or, rent was fixed and the name of the petitioner was entered in the Serishta of the State. Under the circumstance, mere bald assertion regarding possession, unaccompanied by any other documentary evidence in support of it, will not make the possession legal and immune to ejectment proceeding.

Under the circumstance, this Court does not find any infirmity in the impugned order passed by the Revisional Court, whereby Kurfa Patta has not been accepted as a valid document of possession.

Writ petition accordingly, stands dismissed. Interlocutory Application, if any, is disposed of.