

(1989) 02 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 670 of 1980 (R)

Joten Ho and Others

APPELLANT

Vs

Jotni Kui and Others

RESPONDENT

Date of Decision : 24-02-1989

Acts Referred:

Bihar Kolhan Civil Justice (Regulating and Validating) Act, 1978 — Section 2

Citation : (1989) PLJR 704

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : N.K. Prasad and M.K. Laik, for the Appellant; R.C. Khatri and S.B. Gadodia, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, J.—In this writ petition the petitioners have prayed for the issuance of a writ of certiorari quashing the order dated 17.3.1980 passed by the Commissioner, Chotanagpur South Division, Ranchi (Respondent no. 29) in Kolhan Title Partition Appeal no. 63 of 1977 and the order dated 25.1.77 passed by the Additional Deputy Commissioner, Singhbhum at Chaibasa (Respondent no. 30) in Kolhan Title Partition suit no. 17 of 1963. Respondent no. 30 by his impugned order dismissed the suit filed by the petitioners while respondent no. 29 dismissed the appeal on the ground of default, since prompt steps were not taken for substitution of legal representatives of some of the respondents in the appeal. Partar Ho and two others had filed a suit in the year 1963 for partition against the predecessors-in-interest of respondent nos. 1 to 27. The suit for partition was decreed by the Additional Deputy Commissioner, Singhbhum at Chaibasa by order dated 2.6.1970. It is not in dispute that the aforesaid suit was valued at Rs. 1,000/-. Against the aforesaid decree, an appeal was preferred before the Commissioner at Ranchi by the defendants/respondents which was registered as Kolhan Title (Partition) Appeal no. 60 of 1970. The Commissioner by order dated 25.1.1971 directed that the suit be filed before an appropriate

court in view of the fact that the Additional Deputy Commissioner has no jurisdiction to decide the suit. The Commissioner passed such order in view of the judgment of this Court reported in 1968 BLJR 430 (Gangaram Munda v. B.B. Shrivastava) wherein it was held that the Additional Deputy Commissioner had no jurisdiction to try such a suit in the absence of authority given by the Deputy Commissioner. It was the Deputy Commissioner who had jurisdiction to hear and decide the civil suits of the value exceeding Rs. 300/.

2. In view of the order passed by the Commissioner, the plaintiffs/petitioners presented the plaint in the court of the Deputy Commissioner, Singhbhum at Chaibasa. The suit was thereafter transferred to the court of the Additional Deputy Commissioner Chaibasa being Kolhan Title (Partition) suit no. 17 of 1963 by order of the Deputy Commissioner dated 11.8.1977. The Additional Deputy Commissioner sent the case to the Mankis for adjudication. The Mankis submitted two awards. The majority award signed by two Mankis was in favour of the plaintiff's predecessors-in-interest of the petitioners, while the minority award was in favour of the respondents. The Additional Deputy Commissioner by order dated 25.1.1977 accepted the minority award and rejected the Majority award. Consequently the suit was dismissed.

The predecessors in interest of the petitioners who were the plaintiffs, preferred an appeal before the Commissioner on 26.3.1977. The said appeal was registered as Kolhan Title (Partition) Appeal no. 38 of 1977.

During the pendency of the appeal, a petition was filed on behalf of the appellants on 31st January, 1978 praying for substitution of the legal representative of respondent no. 1 in the appeal. The application was ordered to be put up on 14.3.1978. It also appears that during the pendency of the appeal, the Governor of Bihar promulgated an ordinance on 14.4.1978 known as the Bihar Kolhan Civil Justice (Regulating and Validating) Ordinance, 1978 (Bihar Ordinance no. 7 of 1978) which was published in the Bihar Gazette on 5A 1978. On 21.11.1978 the appellants in the pending appeal filed an application that in view of the aforesaid Ordinance, the record of the previous appeal, that is Kolhan Title (Partition) Appeal no. 68 of 1970 be called for and after setting aside the remand order, the said appeal be heard. This was done in view of the provisions of the Ordinance which validated all judgments and decrees passed by the Additional Deputy Commissioner which had been set aside on the ground that the Additional Deputy Commissioner had no jurisdiction to decide such suit. It may be noticed that the aforesaid Ordinance was replaced by Bihar Act VIII of 1978 which was published in the Bihar Gazette Extraordinary on September 6, 1978. The aforesaid application filed by the appellants in the appeal was ordered to be put up on 5.2.1978 for hearing.

No final order could be passed on the application for various reasons. On 26.11.1979 the appellants prayed for time to take step for substitution of legal representatives of respondent nos. 2,10,11 and 13 in the appeal who were reported to be dead. It appears that the appellants asked for time to take

necessary steps and ultimately on 10.3.1960 they filed an application for substitution of the legal representatives of the deceased respondents. It appears that by order dated 17.3.1980, the Commissioner was pleased to dismiss the appeal for default.

3. The submission urged on behalf of the petitioners is that in view of the Ordinance, the earlier appeal being Kolhan Title (Partition) Appeal no. 68 of 1970 revived and in view of the provisions of the Ordinance the Commissioner was bound to call for the records of the said appeal and decide the same in accordance with law, in view of the application made by the petitioners on 21.11.1978 making such prayer. The Ordinance had the effect of terminating the subsequent proceedings which included the judgment and decree and the appeal filed after the order of the Commissioner dated 25.1.1971 directing the plaintiffs to file the suit in proper court. According to the petitioners, original suit filed by them revived and the appeal preferred against the judgment and decree filed in the aforesaid suit was required to be considered and decided by the Commissioner treating the aforesaid judgment and decree as having been passed by an authority having jurisdiction to hear and decide such a suit.

4. In order to appreciate the submission, it is necessary to refer to section 2 of the Bihar Kolhan Civil Justice (Regulating and Validating) Act, 1978 which provides as follows:

2. Regulation and Validating of certain past actions in the Kolhan with the exception of Chaibasa Municipality in the Sadar Sub Division of the District of Singhbhum:--(1) Notwithstanding anything contained in any other law for the time being in force any judgment, decree or order of any court, the officers mentioned in Column-1 of the Schedule shall, in regard to the trial of civil suits and proceedings arising within the local limits of the Kolhan with the exception of the areas comprised within the Municipality of Chaibassa in the Sadar sub-division of the district of Singhbhum and hearing of appeals petitions for review or revision arising therefrom, be deemed to have validly exercised the powers which the officers, mentioned in the corresponding entries in column 2 thereof exercised under the Wilkinson's Rule and under Regulation XIII of 1938, and no order, judgment or decree passed by them shall be deemed to be invalid or shall be called in question in any court or proceedings whatsoever merely on the ground that they were not so empowered.

(2) Where any judgment, decree or order in any suit, appeal or proceeding has been set aside by any court merely on the ground that the said officer had no power or authority to act under the said Rule, the Court, which set aside the judgment, decree or order, shall on an application made to it within six months from the date of the commencement of this Act shall set aside its previous order and shall proceed to hear the suit, appeal or proceeding again and in case there has been any order for remand on such ground, all subsequent proceedings after the remand shall be deemed to have terminated.

5. The Additional Deputy Commissioner is one of the officers mentioned in column 1 of the Schedule. From the provisions of the Act, it is apparent that where any judgment, decree or order in any suit, appeal or proceeding had been set aside by any court merely on the ground that the said officer had no power or authority to act under the said rule, the court which set aside the judgment decree or order, on an application made to it within six months from the date of the commencement of the Ordinance, was required to set aside its previous order and to proceed to hear such a suit, appeal or proceeding again. It was further provided that in case there was any order for remand on such ground, all subsequent proceedings after such remand shall be deemed to have been terminated. This Ordinance was obviously passed with a view to get over the difficulty created by the judgment of this court reported in 1968 PLJR 430.

It appears that in large number of cases, such suits had been decided by the Additional Deputy Commissioner and it was thought that great injustice will be caused to the poor tribals if they had to proceed with the suit de novo in view of a technical objection.

6. Applying the provisions of the Ordinance to the facts of the instant case. I have no doubt that the Ordinance had the effect of reviving the appeal before the Commissioner which had been preferred against the judgment and decree passed by the Additional Deputy Commissioner, Singhbhum in Kolhan Title (Partition) Suit no. 17 of 1963. The aforesaid appeal being Kolhan Title (Partition) Appeal No. 68 of 1970 had been remitted by the Commissioner with a direction that the suit must be filed before the proper court since it had been decided by the Additional Deputy Commissioner who had no jurisdiction to decide the same. Since the petitioners filed an application within six months as required under the Ordinance for setting aside the aforesaid order as well as the subsequent proceedings, the Commissioner was bound to act in accordance with the provisions of the Ordinance, later replaced by an Act. The effect of the Ordinance was that the Commissioner was required to set aside his previous order dated 25.1.1971 passed in Kolhan Title (Partition) Appeal no. 68 of 1970. The consequence thereof was that aforesaid appeal before him revived. Another consequence of the Ordinance and the revival of such an appeal before the Commissioner was that the subsequent proceedings including the subsequent suit filed by the petitioners, the judgment and decree passed therein and the appeal preferred therefrom were deemed to have been terminated. Thus there was no question of the subsequent appeal being Kolhan Title (Partition) Appeal No. 38 of 1977 being dismissed by the Commissioner, in view of the provisions of the Act, the Commissioner had no option but to set aside his earlier order dated 25.1.1971 passed in Kolhan Title (Partition) Appeal No. 68 of 1970 and to proceed to hear the appeal in accordance with law.

7. In this view of the matter, this writ petition must be allowed. The order passed by the Commissioner (Annexure 5) dismissing Kolhan Title (Petition) Appeal No. 38 of 1977 for default is set aside. The Commissioner is directed to pass an

appropriate order on the application filed by the petitioners under the Ordinance setting aside his previous order dated 25.1.1971 in Kolhan Title (Partition) Appeal No. 68 of 1970 and proceed to hear the appeal in accordance with law. In this view of the matter, it is not necessary to consider other submissions urged on behalf of the petitioners that such an appeal could not have been dismissed on the ground of default, and further that the Limitation Act, 1963 did not apply to a proceeding under the Wilkinson's Rules. This writ petition is allowed accordingly. There shall be no order as to costs.