

(1991) 09 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 743 of 1987 (R)

Malo Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-1991

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 46(4A)

Citation : (1992) 2 PLJR 343

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

Bench : Single Bench

Advocate : P.C. Roy, for the Appellant; Alok Lal, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 25.3.1985 passed by Respondent No. 2 and as contained in Annexure-6 to the writ application.

2. The fact of the matter lies in a very narrow compass.

3. One Lalchand Karmali, since deceased, father of Respondent Nos. 5 and 6, filed an application for restoration of various plots of land which have been described in details in paragraph 4 of the writ application, in terms of the provisions of Section 46(4A) of the Chotanagpur Tenancy Act on 11.6.74. The Petitioner appeared in the said proceeding which was initiated pursuant to the said application and inter alia submitted that Bleku Karmali son of Gopi Karmali by reason of a sale deed dated 17.7.47 transferred his right, title and interest in favour of one Lalchand Karmali. Said Lalchand Karmali sold it to one Ram Sunder Mahto in the year 1948 who in turn sold it to Cheman Mahto predecessor-in interest of the Petitioner by virtue of a registered deed of sale dated 1.5.63. The Petitioner, contended that the application for restoration was barred by limitation. The said contention of the Petitioner found favour with the Respondent Nos. 4 and 3.

4. By reason of the impugned order dated 25.3.1985 the Commissioner, North Chhotanagpur Division, however, reversed the said orders holding inter alia therein that as the Petitioner purchased the land in question in 1963, the application was not barred under the law of limitation as she has not been in possession of the said lands for a period of more than 12 years.

5. It has been found as of fact by Respondent Nos. 3 and 4 that the predecessor-in-interest of Respondent Nos. 5 and 6 transferred his right, title and interest as far back as in the year 1947. The Petitioner having purchased the interest of the vendee of the said deed, the possession of the Petitioner in or over the land in question must be tagged with the possession of his vendor and his predecessor-in-interest.

6. Respondent No. 4 has not found that at any point of time in between the period 1947-1963, the Petitioner's father or for that matter his predecessor-in-interest discontinued to possess the land in question.

7. In terms of the proviso appended to Section 46(4A) of the Chotanagpur Tenancy Act, the Deputy Commissioner is precluded from entertaining any application after a period of 12 years from the date of transfer made by a member of scheduled tribe in violation of the provisions of Clause (b) of second proviso appended to Section 46 of the Chotanagpur Tenancy Act.

8. In this case the date of transfer is 17.7.1947. In that view of the matter, the application u/s 46(4A) of the Chotanagpur Tenancy Act having been filed in the year 1974, i.e., much after lapse of a period of 12 years, the same was apparently barred under the law of limitation.

9. In this view of the matter, the order as contained in Annexure-6 cannot be sustained.

10. In the result, this application is allowed. The order dated 25.5.85 and 2.9.1985 as contained in Annexure-6 is quashed, However, in the facts and circumstances of the case, there will be no order as to costs.