

**(1991) 03 PAT CK 0001**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 1885 of 1986 (R)

Md. Salimuddin @ Dhaiba Khan

APPELLANT

Vs

Commissioner, South Chotanagpur Division, Ranchi

RESPONDENT

**Date of Decision :** 26-03-1991

**Acts Referred:**

Chotanagpur Tenancy Act, 1908 — Section 46, 71A  
Limitation Act, 1963 — Article 64, 65

**Citation :** (1993) 1 PLJR 14

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

**Bench :** Single Bench

**Advocate :** N.K. Prasad, P.K. Prasad and M. Sahu, for the Appellant; R.K. Mahto, for the Respondent

**Final Decision :** Allowed

## Judgement

S.B. Sinha, J.—This application is directed against an order dated 5.9.1980 passed by the respondent No. 3 as contained in Annexure 3 to the writ application as also an order dated 14.7.1986 passed by the respondent No. 1 as contained in Annexure-5 to the writ application. The fact of the matter lies in a very narrow compass.

2. The respondent No. 4 filed an application before the respondent No. 3 purported to be u/s 71A of the Chotanagpur Tenancy Act. According to the petitioner, the recorded tenant, respondent No. 4 surrendered his land in favour of the Manager of the Court of Ward and Encumbered Estates by a registered deed dated 28.4.1936 and thereafter, the lands in question were settled in favour of one S. Ahmad, the father of the petitioner by reason of two Hukumnamas dated 28.4.1936 and 7.8.1936.

3. It appears that one Bhikari Pujak, the husband of the respondent No. 4 filed an application for restoration u/s 71 A of the Chotanagpur Tenancy Act which was registered as S.A.R. No. 271 of 1970-71, and by an order dated 26th April, 1971 as contained in Annexure-1 to the writ application, the said application was

dismissed Inter alia on the ground that the petitioner has been in possession of the land in question for a period of 34 years after his father obtained settlement by reason of two Hukumnamas aforementioned.

4. Another application was filed by Bhikari Pujak u/s 71 A of the Chotanagpur Tenancy Act which was registered as S.A.R. case No. 55/71-72, The said application was again rejected by an order dated 29.12.1971.

5. According to the petitioner, no appeal or revision was preferred as against the said order. It appears that a third application being S.A.R. No. 187 of 1971-72, was filed by one Amrit Oraon and aunt of Bhikari Pujak and the same was also rejected by an order dated 25.7.1974, The fourth application was filed by the respondent No. 4 herself which was rejected by an order dated 24.2.1979 passed by the Deputy Collector, Gumla and as contained in Annexure-2 to the writ application.

6. By reason of the aforementioned order, it was held that the application filed by the respondent No. 4 was barred under the principles of res Judicata. It was further held that the said application was also barred by limitation.

7. Curiously enough, the respondent No. 4 filed a fresh application and by reason of the impugned order as contained in Annexure 3 to the writ application, the respondent No. 3 directed restoration of the lands in question in favour of the respondent No. 4. The petitioner preferred an appeal and the respondent No. 2 by an order dated 12.3.1982 allowed the said appeal. The said order is contained in Annexure-4 to the writ application. The respondent No. 4 thereafter, filed a revision application before the respondent No. 1 which was registered as Revision No. 30 of 1982 and by reason of the impugned order as contained in Annexure-5 to the writ application, the said revision application has been allowed.

8. It appears that the respondent No. 1 in his impugned order purported to have stated that the principles of res judicata have no application in a case where an erroneous decision was made.

9. It was further held that in a case of fraudulent transaction, the law of limitation will not apply and Schedule Area Regulation would be applicable even in such a case and the land could be restored to the rightful owner where the opposite party has been in adverse possession of the lands for more than 30 years.

10. The respondent No. 1 has clearly erred in holding that despite the orders passed by the predecessor in office of the respondent No. 3 in rejecting the successive applications filed by the respondent No. 4 and others, would not be barred under the principle of res judicata.

11. It is now well known by various decisions of this Court that the principles of res judicata would apply in a proceeding u/s 71A of the Chotanagpur Tenancy Act.

Reference in this connection may be made to Ram Chandra Sahu vs. State of

Bihar, reported in 1989 BLT 482 : 1989 PLJR 604 and in Dhananjay Mandal Suri vs. The State of Bihar, reported in 1990 PLJR 633.

12. The respondent No. 4, therefore, is not correct in holding that the principles of res judicata would have no application in a case where the earlier decision was erroneous.

13. Further, in view of the amendments made in Articles 64 and 65 of the Limitation Act, 1963 effected by reason of the provisions of Schedule Area Regulation 1969, the period of limitation for filing such an application would be 30 years.

14. Any application filed after the period of limitation will be barred. The third proviso to Section 71A of the Chotanagpur Tenancy Act merely postulates that in a case where a person has acquired title by adverse possession, recourse of the said provision may be taken if the conditions precedent therefore are satisfied.

15. In the instant case, the respondent No. 3 and consequently the respondent No. 1 have not held on the basis of the evidences on records that the registered deeds of surrender executed by the recorded tenant and consequent settlement made in favour of the father of the petitioner were part of same transaction so as to constitute transfer within the meaning of Section 46 of the Chotanagpur Tenancy Act.

16. It is now well known that the provisions of Chotanagpur Tenancy (Amendment) Act came into force in 1947 and thus for surrendering his holding by a raiyat, the permission of the Deputy Commissioner was not required at the relevant point of time.

17. In this view of the matter, a surrender which was made prior to coming into force of the aforementioned Act could be declared invalid only if the same coupled with a subsequent settlement made by the landlord formed the part of the same transaction and not otherwise.

18. Taking thus all facts and circumstances into consideration, it must be held that the orders passed by the respondent Nos. 3 and 1 as contained in Annexures 3 and 5 to the writ application are wholly illegal and without jurisdiction. This application is, therefore, allowed and the impugned orders as contained in Annexures 3 and 5 are quashed. Let a writ of certiorari be issued accordingly. However, in the facts and circumstance of this case, there will be no order as to costs.