
(2001) 10 JH CK 0026

In the Jharkhand High Court

Case No : Appeal from Appellate Decree No. 105 of 1986 (R)

Morha Pahan and Others

APPELLANT

Vs

Gajra Munda and Others

RESPONDENT

Date of Decision : 14-10-2001

Acts Referred:

Evidence Act, 1872 — Section 50

Citation : (2002) 50 BLJR 1189

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Debi Prasad and L.K. Lal, for the Appellant; N.N. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—Plaintiffs are appellants.

2. Admittedly, Odrey Pahan was recorded tenant of 15.76 acres land, appertaining to Revisional Survey Khata No. 5 in village Ranhe, District Ranchi, who died issueless.

Both plaintiffs as well as defendants claimed themselves to be the nearest agnates of Odrey Pahan and in that capacity to have succeeded to the suit lands.

3. According to plaintiffs, Karcho Pahan had four sons, namely, Kebe, Goera, Binu and Sedga, Descendants of Goera are defendants 1 and 2 and descendants of Binu is defendant No. 7. Sedga had four sons. Plaintiffs 1 and 2 are descendants of one of his son, Madu and plaintiffs 3 and 4 are descendants of his another son, Soma. His third son Nonoa died leaving behind a son, Rusu, who had a son, Odrey Pahan.

4. Under Chota Nagpur Tenures Act, 1869, Bhuinhari survey was done by Rakhal Das Halder. Revisional Survey Khawat No. 7/17, corresponding to Cadestral Survey Khawat No. 5/5 was recorded in the name of Odrey Pahan, son of Rusu

Pahan. Bhuinhari lands of Odrey Pahan under Revisional survey Khata No. 160, Khewat No. 7/17 came in plaintiffs' possession, being his nearest agnates after he died issueless and his line of descendants was extinguished.

5. Plaintiffs' further case was that Odrey Pahan had gone to Assam for his livelihood, entrusting his raiyati lands of Re-visional Survey Khata No. 5 in custody of Sami Mundain, daughter of Teka Munda on the condition that she would return those lands when he comes back and as such in the Revisional survey, entries were made accordingly. There was a proceeding u/s 145/146 of the Code of Criminal Procedure In respect of suit lands between the parties, which was decided in favour of defendants on 15-9-1969.

Hence, the plaintiffs filed the suit for declaration that they were the nearest agnates of Odrey Pahan and for confirmation of possession or, in the alternative, for recovery of possession over the suit lands.

6. Defendants claimed that Rusu Pahan had three sons, Goera, Binu and Nenoa. Defendants 1 and 2 are the descendants of Goera, whereas defendant No. 7 is the descendant of Binu. Nenoa had left behind a son Rusu and Odrey was the son of said Rusu. Plaintiffs had no relationship with Odrey Pahan, who was recorded tenant of R.S. Khata No. 5. Thus the defendants were the nearest agnates of Odrey Pahan, who died issueless. They denied Goera and Binu to be sons of Korcho. They came in possession of the suit lands after death of Odrey Pahan and are paying rent to the state.

7. The trial Court dismissed the suit, holding that at no point of time plaintiffs were in possession of the suit land; rather it was in actual physical possession of the defendants for over thirty years and they had acquired title over the same by virtue of their being nearest agnates of recorded tenant Odrey Pahan. It was further held that defendants also perfected their title over the suit land by adverse possession and the suit was also barred by limitation.

8. Plaintiffs' appeal against the said decree was also dismissed. Trial Court's finding that defendants came in possession over the suit land after death of Odrey Pahan was affirmed.

9. Admittedly, the suit lands were not Bhuinhari lands of Odrey Pahan; rather his raiyati lands.

10. Defendants produced rent receipts (Exhibits A series) granted by landlord on payment of rent by them or their father.

11. Plaintiffs on the other hand, did not produce any rent receipt granted by the landlord. The first rent receipt produced by them (Exhibit 1/C) was issued by the State in 1963, which was found to be doubtful. The next receipt (Exhibit 1/D) was of 1964.

12. In the meantime a mutation dispute started between the parties.

13. On analysis of evidence, the Court of appeal below found that plaintiffs failed

to prove their subsisting title over the suit land.

14. So far as the genealogy, as propounded by the plaintiffs, was concerned, no documentary evidence was produced to prove the same.

15. Plaintiff No. 1 got himself examined as P.W. 1 Plaintiff No. 2 who was the oldest member of the family was not examined. None belonging to the family of Kebe, Goera and Binu, although according to the plaintiffs they were supporting them, came forward to support the said genealogy.

16. P.W. 2, aged about 40 years, was not competent to depose on the point of genealogy. In paragraph 31 of his deposition, the said witness admitted that Neona, father of Rusu, was brother of Binu and in this manner supported the defendant's genealogy. P.W. 3 failed to give description of the plaintiffs family and thus he had no knowledge about the genealogy in question. P.W. 4 had also no idea of the plaintiffs' ancestors.

17. In this situation, the Court of appeal below rightly observed that none of the plaintiffs' witnesses disclosed any special means of knowledge on the relationship as set out by them in proof of the genealogy given in the plaint. Their evidence did not fill-fill the requirement of law as laid down u/s 50 of the Evidence Act.

18. The plaintiffs-appellants had withdrawn the documents (Exhibits) filed by them in the Court below and inspite of order dated 6-8-1999 they failed to refile those documents in this Appeal and as such those documents were Ignored and counsel for the appellants did not make reference thereof in this Appeal.

19. I find that the present Second Appeal is concluded by concurrent findings of fact recorded by the two Courts below.

20. In the result, this second Appeal is dismissed, but without costs. Let the lower Court records be sent down immediately.