
(2010) 09 JH CK 0152
In the Jharkhand High Court
Case No : SA No. 234 of 2005

Most. Khagia and Others

APPELLANT

Vs

Most. Rajmukhi and Others

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 90
Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (2011) 1 JCR 483 : (2011) 6 RCR(Civil) 2431

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari. J.

1. This second appeal is against the judgment and decree of the Additional District Judge, Fast Track Court-VI, Hazaribagh, whereby learned Lower Appellate Court has allowed the appeal filed by the Plaintiffs/Appellants/Respondents.

2. The Plaintiffs had filed Title Suit No. 22 of 1979, seeking relief for declaration that the survey entry in respect of the suit land, described in Schedule-A, in the names of the Defendants, is erroneous and that the right, title and possession of the Plaintiffs in respect of the suit land be confirmed and if the Plaintiffs are found dispossessed from any portion of the suit land, the possession be recovered, evicting the Defendants from the suit land.

3. The Plaintiff case was that the land appertaining to Old khata No. 54, Plot No. 2073, area 7.69 acres of village Chuglamo, P.S. Barkatha, district Hazaribagh was Bakast land of ex-landlord of Ramgarh Estate. By virtue of settlement dated 26th November, 1943 and Furd Report of Amin dated 12th February, 1943, the ex-landlord had settled an area of 4.40 acres of the said Plot No. 2037 along with other land in favour of Khublal Choudhary, father of Plaintiff Nos. 1 to 4 and husband of Plaintiff No. 5. Since thereafter, the Plaintiffs had been in continuous

peaceful possession of the land. After vesting of the estate, the predecessor-in-interest of the Plaintiffs was recognized as raiyat in respect of the said land and the rent receipts were granted to him. In the revisional survey, nine new plots, out of plot No. 2073, were carved out. New Plot Nos. 4011, 4012, 4013 and 4015 and new Khata No. 31 are recorded in the names of the Plaintiffs". However, there was some error in respect of the actual area of Plot No. 4011.12 decimals of the Plaintiffs" land of new Plot No. 4011 has been wrongly recorded in the name of the Defendant. Taking undue advantage of the said erroneous entry, the Defendants started claiming their right over the suit land. The dispute led to a proceeding u/s 107, Code of Criminal Procedure. The Defendants" claim is wholly baseless. They have absolutely got no right, title, interest and possession over the suit, described in Schedule-A.

4 The Defendants contested the title suit, claiming, inter alia, that the land was never acquired by Khublal Choudhary. The documents referred by the Plaintiffs are all forged and fabricated. The Defendants acquired land of Khata No. 54, Plot No. 2073, area 0.77 acres by virtue of parcha dated 15th February. 1942 on payment of Salami followed by payment of rent. In spite of their settlement, the land was not recorded in their names in the revisional survey. The Defendants filed a petition u/s 90 of the Chhotanagpur Tenancy Act, praying for correction and entry of their names in the survey record. The said petition was allowed and their names were recorded in the survey record. The Defendants claimed that they have been in possession of the said land.

5. Learned trial Court framed several issues. Both the parties led their evidences; oral as well as documentary. On conclusion of the trial, learned Court below decided the issue, regarding title against the Plaintiffs. Learned trial Court also decided other issue against the Plaintiffs and dismissed the suit.

6. The Plaintiffs, thereafter, preferred appeal before the District Judge. The said appeal was also dismissed. Against the judgment and decree of the learned lower Appellate Court, the Plaintiffs had filed second appeal, being S.A. No. 144 of 1982(R). The said second appeal was allowed and the appeal was remitted to the lower Appellate Court for fresh consideration and decision in accordance with law.

7. The impugned judgment and decree has been passed on remand after hearing the parties afresh.

8. Learned lower Appellate Court discussed all the relevant factual and legal aspects in great detail and scrutinized the oral and documentary evidences thoroughly. He held that the Plaintiffs have got valid right, title, interest and lawful possession over the suit land. He further observed that the Defendant failed to bring on record the parcha on the basis of which he claimed acquisition of the suit land, or any other relevant document in support of his claim.

9. Mr. Manjul Prasad, learned senior counsel, appearing on behalf of the Appellants, submitted that the judgment and decree of the learned lower Appellate Court is erroneous and unsustainable, as the same has not met the

reasoning of the learned trial Court while upsetting the finding recorded by the trial Court.

10. I have heard learned Counsel and perused the judgments of the trial Court as well as learned lower Appellate Court.

11. Learned lower Appellate Court, as aforesaid, has thoroughly discussed each and every aspect of the matter, including the evidences adduced by the parties, and has assigned speaking reasons for coming to his own conclusion and reversing the finding recorded by learned trial Court. The findings of learned lower appellate Court are based on evidences and materials on record.

12. I find no error in the judgment and decree of the learned lower Appellate Court giving rise to any substantial question of law to be framed and decided in this second appeal.

13. This appeal is, accordingly, dismissed.

14. No order as to costs.