
(2006) 02 JH CK 0052
In the Jharkhand High Court
Case No : S.A. No. 415 of 2003

Mrs. Salma Kkhatoon and Another

APPELLANT

Vs

Kalyan Kar and Others

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Santhal Pargana Tenancy (supplementary Provisions) Act, 1949 — Section 20, 42, 63, 69

Citation : (2006) 3 JCR 28

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : G. Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—This second appeal has been filed by the plaintiffs-appellants-appellants against the judgment and decree of 3rd Additional District Judge (FTC), Jamtara passed in Title Appeal No. 21/96/17/2002 dismissing the appeal. The plaintiffs filed the suit for declaration of their right, title and interest and for declaring that the orders passed by the Additional Deputy Commissioner as well as commissioner under the provisions of Santhal Pargana Tenancy Act is void, illegal and ineffective. The plaintiffs also prayed for decree of permanent injunction, restraining the defendants from evicting the plaintiffs from the suit property.

2. The case of the plaintiff is that her father was a Jamabandi raiyat and he had been in possession of the suit property measuring an area of 3 1/2 decimals since 1937 which was given to the father of the plaintiff by the defendant No. 9. She claimed to have acquired title by adverse possession. Further case of the plaintiff is that the defendant Nos. 5 to 8 sought restoration of the said land under the provisions of Santhal Pargana Tenancy Act and the restoration was erroneously allowed by the Deputy Commissioner, which was also confirmed by the Commissioner, Santhal Pargana Division. The said orders are illegal and

contrary to law.

3. The defendant No. 8 contested the suit by filing written statement. Defendant Nos. 5 to 7 adopted the said written statement filed by defendant No. 8. In the written statement besides taking usual ground of maintainability of the suit and bar of limitation etc., it was, inter alia, stated that the plaintiffs are strangers and there is no question of acquisition of any right over the suit property as claimed by them. Their claim of existence of residential house over a portion of the same is false. Earlier also such false claim was made by the plaintiffs and the Sub-Divisional officer by order dated 25.4.1984, in R.E. Case No. 2/1982-83, rejected the same and passed order for eviction. The plaintiffs have absolutely no right and the orders of learned Additional Deputy Commissioner and Commissioner are final and conclusive. The provision of Section 63 of the Santhal Pargana Tenancy (supplementary Provisions) Act, 1949 bars any suit. It has been submitted that Section 69 of the said Act also bars claim of any right over the suit property by any stranger.

4. Learned trial court framed several issues. Both the parties led evidences. After thorough consideration of the pleadings, evidences and materials on record as well as provisions of law, learned trial court came to the finding that the orders of the authorities are correct and they have acted in accordance with law within their jurisdictions and have rightly ordered for eviction of the plaintiffs from the suit property. The trial court dismissed the plaintiffs' suit.

5. The plaintiffs filed regular appeal in the court of the District Judge, Jamtara. The said appeal was finally heard and decided by the 3rd Additional District Judge, FTC, Jamtara. Learned lower appellate court also thoroughly considered and discussed the facts, evidences and materials on record as well as the provisions of law applicable in the case and affirmed the findings recorded by the trial court. The lower appellate court has also concurrently found that the plaintiffs have got no right, title and the orders passed by the Additional Deputy Commissioner as well as the Commissioner are correct and in accordance with law and that the suit, challenging the said orders, is barred u/s 63 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. Learned lower appellate court also held that the plaintiffs have got no title by adverse possession.

6. Learned Counsel for the appellant has taken a ground that Section 63 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 has got no application as in the instant case the subject matter is not an agricultural land and it is a homestead land and as such the case does not fall within the ambit of Sections 20 and 42 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 and on the said basis the learned Counsel submitted that the judgments and decrees of the courts below are vitiated in law.

7. From perusal of record, I find that the said ground of the learned Counsel is wholly misplaced. It is not the case of the plaintiffs that the land is not an agricultural land and the matter was outside the ambit of the said provisions of

Santhal Pargana Tenancy Act. The ground taken by learned Counsel has no foundation on record. The appellants thus failed to make out any ground leading to any substantial question of law. There is thus no merit in this appeal, which is, accordingly dismissed.