

(2016) 09 JH CK 0118
In the Jharkhand High Court
Case No : W.P.(C) No. 3581 of 2007

Nageshwar Prasad Chaudhary	Vs	APPELLANT
State of Jharkhand		RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JBCJ 273

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Ayush Aditya and Mr. Shashank Shekhar, Advocate, for the Petitioner; Mr. Bhawesh Kumar, S.C. II, for the State; Mrs. Ritu Kumar, Advocate Mr. Samavesh Bhanj Deo, Advocate, for the Respondent No. 7

Final Decision : Allowed

Judgement

Mr. Shree Chandrashekhar, J.—The petitioner and the respondents/opposite parties are descendants of one Sohan Lal Choudhary, who had five sons, namely, Babu Lal Choudhary, Anant Lal Choudhary, Hemant Lal Choudhary, Pareshnath Choudhary and Sukhu Choudhary. The petitioner claiming preparation of survey settlement on the basis of possession of parties over Jamabandi No. 7 as per the Gantzer's settlement, filed Misc. Petition No. 332 of 2000 which was dismissed by the Assistant Settlement Officer on 25.06.2001. The Appellate Authority Settlement Officer in the appeal vide Misc. Appeal No. 17 of 2001 set-aside order dated 25.06.2001, which on further appeal vide RMA No. 84 of 2005-06 filed by sons of late Suresh Prasad Choudhary and Abinash Prasad Choudhary, restored order passed by the Assistant Settlement Officer. Aggrieved, the petitioner has filed the instant writ petition.

2. It is not in dispute that two sons of Sohan Choudhary namely, Pareshnath Choudhary and Sukhu Choudhary died before the Gantzer's settlement and consequently, the properties were recorded jointly in the name of Babu Lal Choudhary, Anant Lal Choudhary and Hemant Lal Choudhary and a portion of the

property at mouza Mohanpur was separately recorded in the name of the aforesaid three brothers. The respondents claimed family partition in the year, 1941, according to which properties were distributed amongst Babu Lal Choudhary and Anant Lal Choudhary. Other brother namely, Hemant Lal Choudhary had died in the year, 1936. Objecting to the Khanapuri, Tanaja No. 01 was filed which was dismissed on 17.06.1984 and the said order became final. 16 years thereafter, the petitioner filed Misc. Petition No. 332 of 2000 which was dismissed on 25.06.2001.

3. During the course of hearing, to a specific query from the Court whether the petitioner has remained in possession of the property for which he claimed entries in the recent survey settlement on the basis of Gantzer's Settlement, the learned counsel for the petitioner failed to show any evidence which was led before the courts below.

4. The respondents have claimed that since 1941 they had been paying rent in equal shares. It appears that before order dated 25.06.2001 was passed by the Assistant Settlement Officer, several enquiries were conducted during which the villagers supported the claim of partition between the parties. Settlement rules provide that in Column-11 of the khatian name of the persons who are in actual possession be recorded. The plea that the partition papers were forged has not been accepted by the revisional authority, observing that the partition vide punchnama recorded in the year, 1941 was signed by the ancestors of the parties. The revisional authority has rightly held that in the recent survey settlement name of persons who are in actual possession, irrespective of entries in the Gantzer's settlement has to be made. The dispute raised by the petitioner is in respect of Jamabandi No. 7 which is recorded jointly in the name of ancestors of both the parties. In view of the survey conducted during the pendency of Misc. Petition No. 332 of 2000 which affirms the stand taken by the respondents that pursuant to partition in the year, 1941 the parties came in actual physical possession of their respective shares and on account of lack of any evidence produced by the petitioner establishing his claim that he is also in possession of the properties comprised in Jamabandi no. 7, I am of the opinion that the revisional authority has rightly allowed Revision No. RMA No. 84 of 2005-06 and affirmed order passed by the Assistant Settlement Officer in Misc. Petition No. 332 of