

(2014) 08 JH CK 0002

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 2113 of 2005

Nasim Khan

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 90
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 22
Rule 10, Order 8 Rule 3
Constitution of India, 1950 — Article 227

Citation : (2014) 4 AJR 668 : (2014) 4 JLJR 81

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : A.R. Choudhary, Advocate for the Appellant; V.K. Prasad, Advocate, M.S. Anwar, Sr. Advocate and Afaque Ahmad, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Raising their claims over the property in question through order and settlement dated 07.11.1994 and 31.03.1998, an application under Order 1 Rule 10 of the C.P.C. was filed in Title Appeal No. 03 of 1996. The said application has been dismissed vide order dated 07.03.2005 and therefore, challenging the same the petitioners have approached this Court. The brief facts of the case are that, the petitioners who claim themselves to be the riot victims of the communal riots, were settled by the State Government over the land comprised in Khata No. 1249 in Plot Nos. 3653 & 3588 situated at Mouja-Mango, Thana No. 1642 in Ward No. 8. The said piece of land is recorded in the Khatian in the name of the State of Bihar and it was allotted to the petitioners and their fathers through order dated 07.11.1994 and Settlement chart dated 31.03.1998. The petitioners were residing in the said property and they constructed substantial structure over the same. Recently, the petitioners came to know about the Title Suit No. 203 of 1990 which vide judgment and order dated 25.11.1995 was decreed in favour of one Habibur Rahman. The order dated 25.11.1995 has been challenged by the State of Bihar in Title Appeal No. 03 of

1996 which is pending in the Fast Track Court No. 7 at Jamshedpur. In these facts an application was filed on 27.01.2005 in the pending Title Appeal No. 03 of 1996 for being added as parties in the said Title Appeal. As noticed above, the said application has been dismissed vide order dated 07.03.2005 and therefore, the present writ petition has been filed.

2. A counter-affidavit has been filed on behalf of the respondent No. 2 namely, Habibur Rahman who died during the pendency of the present writ petition. It is stated that the land in Plot No. 526 comprising 6 1/2 Bighas originally belonged to one Praful Kumar Ghosh and others and they had the Darmokeshri rights over the said land. In the year, 1941 the property was settled in favour of Late Sardar Charan Singh Kalsi through registered deed of perpetual settlement of immovable property dated 18.12.1941 by the said Praful Kumar Ghosh and others. Thereafter, on the suit land Sardar Charan Singh Kalsi constructed houses and cultivated the same and used the same as Bagan known as "Sardarjee Ka Bagan". After the death of Sardar Charan Singh Kalsi, his sons namely, Manmohan Singh, Guru Charan Singh and Bhupendra Singh came in possession over the suit land. In the survey settlement of the year, 1964, the suit land in plot Nos. 4721, 4722, 4724, 4725 and 4727 along with other lands were recorded in the name of Manmohan Singh and Guru Charan Singh in their raiyati rights. In the present survey, plot No. 3586 has been carved out from old plot Nos. 4722, 4724 and 4725 and the portion of plot No. 4721 whereas, the plot No. 3588 has been carved out from plot No. 4727 and a portion of plot No. 4721 of 1964 survey. Subsequently, Manmohan Singh and others sold the entire land to different persons including the plaintiff/respondent No. 2 after obtaining necessary permission from the competent authority. The respondent No. 2 had purchased a portion of R.S. Plot No. 4721 and 4727 (present survey plot No. 3588) having an area of 32 decimals through a registered sale deed dated 11.08.1986 on payment of consideration and since the purchase the respondent No. 2 has been in possession of the same. In the present survey however, both the plots bearing No. 3586 & 3588 were wrongly recorded in the name of State of Bihar. The vendors of the plaintiff/respondent No. 2 filed a case under Section 90 of the Chota Nagpur Tenancy Act bearing Case No. 742 of 1984-85 against the State of Bihar for correcting the entry of plot No. 3586 and by order dated 14.10.1987, the Settlement Officer corrected entry in plot No. 3586 however, for plot No. 3588, it was held that no correction was required. The respondent No. 2 filed Title Appeal No. 203 of 1990 for declaration of Title and confirmation of his possession over an area of 32 decimals in plot No. 3588. The Suit was decreed and a decree for recovery of possession with respect to suit land was also passed. Thereafter, the respondent No. 2 filed Execution Case No. 16 of 2001 and vide order dated 24.05.2004 the delivery of possession in favour of the respondent No. 2 was issued and pursuant thereof possession was delivered to the respondent No. 2. Vide order dated 07.03.2005 the claim of the writ petitioners that the suit property was settled in their favour has been not accepted and it has been held that the petitioners have failed to produce even a

chit of paper before the Court to establish that the land has been settled in their favour.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioners has submitted that in Title Suit No. 203 of 1990, since the decree for recovery of possession with respect to the portion of the suit land over which the displaced persons, that is, the petitioners, were settled is also passed without hearing the petitioners and since such order could not have been passed in the absence of the petitioners therefore, the petitioners are necessary party. The plaintiff/respondent No. 2 intentionally did not implead the petitioners as defendants in Title Suit No. 203 of 1990 and obtained a decree behind the back of the petitioners and when this fact came to the notice of the petitioners, the petitioners immediately preferred an application under Order 1 Rule 10 of the C.P.C. along with application for intervention in the Title Appeal No. 03 of 1996. It is submitted that since the appeal is a continuation of the suit, the parties whose rights are adversely affected can be joined at the appellate stage also. Vide order dated 07.03.2005, the learned Appellate Court erroneously rejected the application preferred by the petitioners on the ground that at the appellate stage the petitioners cannot be made party in the Title Appeal No. 03 of 1996. The learned counsel for the petitioners has further relied on the Provision contained in Order VIII Rule 3 and Order XXII Rule 10.

5. Mr. M.S. Anwar, the learned Senior counsel appearing for the respondent No. 2 submitted that the controversy as to title and possession of the property in question is between the plaintiff/respondent No. 2 and the State of Bihar. The petitioners are strangers to the proceeding and they have rightly not been permitted to intervene in the Title Appeal preferred by the State of Bihar. It is further submitted that the alleged order of settlement dated 07.11.1994 and 31.03.1998 would only indicate that a proposal was sent by the Circle Officer, Jamshedpur recommending grant of lease for 30 years in Thana No. 1642, Ward No. 8, Khata No. 1249, plot No. 3653/(part) and 3588/(part) area 20" x 14" which is recorded in the survey khatian in the name of the Government of Bihar in favour of the petitioners and the chart indicates that the petitioners and/or their ancestors were the proposed beneficiary. The petitioners have not produced even a chit of paper to demonstrate that the property in question was allotted to them by the order of the Government of Bihar. The petitioners have only claimed the possession and in Execution Case No. 16 of 2001 on 24.05.2004 they have already been evicted from the suit property. It is further submitted that the power of the High Court under Article 227 of the Constitution of India is very limited and it would not examine the legality of the order passed in the pending suit or the execution case. The question with respect to title and ownership of the suit property also cannot be adjudicated in the present proceeding. It is further submitted that there is inordinate delay on the part of the petitioner to

approach the Court. The Title Suit No. 203 of 1990 was instituted on 17.12.1990 and it was decreed vide order dated 25.11.1995. The Title Appeal No. 03 of 1996 was filed on 11.08.1996 and only after in Execution Case No. 16 of 2001 an order was passed on 24.05.2004 for evicting the petitioners, they moved the Appellate Court by filing an application dated 27.01.2005 seeking impleadment in the Title Appeal. In these facts, it is submitted that the Court below while rejecting the application for intervention vide order dated 07.03.2005 has not committed any illegality warranting interference by this Court exercising power under Article 227 of the Constitution of India.

6. Before examining the claim of the petitioners that they are necessary parties, it is necessary to examine the nature of right claimed by the petitioners over the suit property. A perusal of documents dated 07.11.1994 and 31.03.1998 discloses that a proposal for settlement of a piece of land admeasuring 20" x 14" comprised in khata No. 1249, plot No. 3653/(part) and 3588/(part) in favour of each of the petitioners for 30 years on lease was submitted by the Circle Officer, Jamshedpur to the Deputy Collector, Land Reforms, Dhalbhum, Jamshedpur. The proposal was based on an enquiry in which it was mentioned that the land in question was recorded in Survey Khatiyani in the name of the Government of Bihar. The settlement chart dated 31.03.1998 only indicates the name of the petitioners and/or their predecessors. The petitioners have failed to bring on record any document which would establish their title over the land in question.

7. The learned counsel for the petitioners have submitted that since "a decree for recovery of possession with respect to a portion of the suit land over which some displaced persons have been settled by the defendant", has been passed, it has been admitted by the plaintiff/respondent No. 2 and noticed by the learned Court below that the petitioners were in possession of the suit property and therefore, without hearing them an order of dis-possession should not have been passed. It is thus submitted that the petitioners are the necessary party and even at the appellate stage their application for intervention under Order 1 Rule 10 of the C.P.C. can be allowed. From the order dated 25.11.1995 passed in Title Suit No. 203 of 1990, it appears that during the trial it has come on record that some government officials, contractors and labours came to the suit land with bamboos etc. and started constructing Jhopries in which some persons were to be settled. The suit was filed in the year, 1990 and as noticed above, the proposal for settlement of different plots to the petitioners was moved on 07.11.1994. It is thus apparent that as on 17.12. 1990 when the suit was filed the petitioners were not in possession over the land belonging to the respondent No. 2 however, it appears that during the pendency of the Title Suit the petitioners were settled over the suit land and that is the reason a decree for recovery of possession has also been passed.

8. It is well-settled that the plaintiff in a suit being "dominus litis" chooses the persons against whom he wishes to litigate. The plaintiff cannot be compelled to sue a person against whom he does not seek any relief. However, there is

exception to this general Rule and under Order 1 Rule 10(2) C.P.C., the Court has power to add any person who has been found to be a necessary party or a proper party. However, Order 1 Rule 10(2) C.P.C. does not give an absolute right to any party to be impleaded as a party but it only invests a discretion in the Court to add a party at any stage of the proceeding. In *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, the Hon'ble Supreme Court has held that a necessary party is one without whom, no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding.

9. In *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others*, it has been held that, "a person who is likely to secure right/interest in suit property, after the suit is decided against the plaintiff, would not become a necessary party or proper party to the suit for specific performance."

10. As noticed above, the petitioners are claiming interest in the property in question on the basis of the purported settlement by the Government of Bihar. Even, according to the petitioners, the suit property belonged to the State of Bihar and it is a matter of record that the State of Bihar has preferred Title Appeal No. 03 of 1996. It is also admitted by the parties that pursuant to warrant of delivery of possession dated 24.05.2004, the petitioners have been evicted from the suit property. Thus, in the event of the State of Bihar (now the State of Jharkhand) succeeding in Title Appeal No. 03 of 1996, the petitioners may be delivered possession of the suit property. From the materials brought on record, I find that merely because a decree of recovery of possession to the suit property over which the petitioners were allegedly settled has been, passed it cannot be construed to mean that the petitioners are either necessary party or proper party. Merely on a pretence of some right in the property in question, the petitioners cannot be added party in the Title Appeal No. 03 of 1996. The learned Appellate Court has rightly rejected the application for intervention moved by the petitioners.

11. The learned counsel for the petitioners has submitted that since the Trial Court has noticed that the petitioners were settled over the suit property and such finding has not been challenged by the respondent No. 2 by filing cross-appeal, the respondent No. 2 has admitted the interest of the petitioners in the suit property. This contention is liable to be rejected. The defendant-State of Bihar (now State of Jharkhand) did not raise the plea of non-joinder of parties. The finding with respect to the settlement of some displaced persons recorded by the Trial Court even if not challenged by the respondent No. 2, cannot be construed as an admission on the part of the respondent No. 2 that the petitioners have interest in the suit property.

12. The learned Senior counsel appearing for the respondent No. 2 has rightly contended that in an application under Article 227 of the Constitution of India,

the High Court is precluded from examining the merits of the matter and therefore, the question of title of respondent No. 2 cannot be adjudicated in the present proceeding.

13. The learned counsel for the petitioners has further submitted that the petitioners are sikh riot victims and as a measure of compensation the then the State of Bihar settled their families on the suit property and therefore, they cannot be thrown on road. It is submitted that due to dismissal of their application vide order dated 07.03.2005 the petitioners have been rendered remediless. I am of the considered opinion that the plight of the petitioners is on account of negligent and indifferent approach of the Government Authorities. The petitioners, it appears that after their settlement on suit property did not follow the matter with the authorities or perhaps they were under the impression that land over which they were settled have been finally allotted to them. Though, I am unable to accede to the prayer made on behalf of the petitioners that a direction may be given to the State of Jharkhand for allotting alternative plots to the petitioners however, it is open to the petitioners to approach the Government of Jharkhand for redressal of their grievance and it is expected that the State Government looking into the plight of the petitioners would take a suitable decision in the matter. In the result, the writ petition is dismissed. Consequently, I.A. No. 9136 of 2013 is also dismissed.