
(2016) 09 JH CK 0074
In the Jharkhand High Court
Case No : W.P.(C) No. 2556 of 2015

Panchanan Bit

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Citation : (2017) 173 AIC 360 : (2017) 1 JCR 546

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. A.K. Das, Advocate, for the Petitioner; Mr. Atanu Banerjee, G.A, for the State; Mr. Lalan Kr. Singh, Advocate, for the Respondent No.5

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J.—; Heard counsel for the parties.

2. The Sub-Divisional Officer, Pakur ? respondent no.3 earlier passed an order bearing memo no.311 dated 21st May 2015 on the application of the petitioner to demarcate a piece of land measuring 17 Kathas 11 Dhurs being Plot no.22 pertaining to Jamabandi No.11, Mouza Sunderpur, P.S./Circle Hiranpur, District Pakur out of total area of 1 Bigha 15 Katha and 10 Dhurs of land in the said plot. By the subsequent order dated 8th June, 2015 bearing letter no.339 addressed to the respondent no.4- Circle Officer, Hiranpur, District Pakur again (Annexure-8) he recalled the order, this time on the objection made by the respondent no.5 herein. Respondent no.5 complained that the judgment passed in Title Appeal No.03/2010, Md. Tarique & Ors. v. The State of Jharkhand & Ors. (Annexure-3) dated 31st March, 2015 in respect of same piece of land in which the petitioner was defendant no.8 and respondent no.5 herein was defendant no.5 therein were not brought to the notice of learned Sub-Divisional Officer. The respondent no.3, therefore, recalled the earlier order dated 21st May, 2015 (Annexure-5) and directed the Circle Officer, Hiranpur to consider the applications/objections of the rival parties and any other objection in respect of the lands in question and thereafter undertake the exercise of demarcation in

accordance with law. The respondent no.4 was also directed to look into the judgment passed by the appellate court and any other document of partition in respect of the plot in question.

3. Petitioner contends that the plot had been demarcated on issuance of the earlier order at Annexure-5 dated 21st May 2015. Recall of the aforesaid order, therefore, cannot restore the status-quo. Learned Title Appellate Court held in the judgment dated 31st March 2015 that the transfer of the said plot in favour of the original plaintiff Kabir Ahmad was illegal. Learned counsel for the petitioner has also sought to rely upon same judgment such as paragraphs-59, 95, etc. to support his case that the learned appellate court has recorded that land of Jamabandi No.11 were recorded in the name of Gangadhar Prasad Bit, father of the petitioner and Banbihari Bit. There is no dispute therefore relating to title of the property so far as petitioner is concerned. Therefore, the impugned order in the nature of review of its earlier order of the Sub-Divisional Officer, Pakur is untenable in law and on facts.

4. Learned counsel for the State submits that demarcation of the Plot in question at the instance of the petitioner, is not a legal enforceable right. No claim for title or possession can be created on the basis of such a demarcation. The judgment rendered by appellate court of District Judge-I, Pakur in Title Appeal No.03/2010 at the instance of the original plaintiff cannot be construed to have adjudicated the right, title and ownership of either the defendant no.5 or the defendant no.8 i.e. the respondent no.5 or the petitioner herein. The Sub-Divisional Officer, however, on having come to know of the judgment passed by the Title Appellate Court has only directed the Circle Officer, Hiranpur to look into the applications/objections of rival parties in the light of the judgment rendered by Title Appellate Court and any other documents of partition etc. which may be produced on their behalf. Any demarcation done or boundary wall constructed in the meantime would not amount to create any independent right dehors what is permissible and available in law to the petitioner or the respondent no.5.

5. Learned counsel for the respondent no.5 has also defended the impugned order stating that the order of demarcation obtained earlier vide Annexure-5 by the petitioner was in the absence of any knowledge of the adjudication by the District Judge, Pakur in the Title Appeal No.03/2010 over the same plot in question at the behest of the original plaintiff Kabir Ahmad. The Sub-Divisional Officer, Pakur has only asked the respondent no.4 ? Circle Officer, Hiranpur to look into all papers connected with the plot in question and hear the objection of the parties before entering into exercise of demarcation of the plot.

6. Considered the submissions of the parties and the relevant material facts pleaded. The whole controversy which seems to have arisen on the question of demarcation of the aforesaid plot at the behest of the petitioner through the revenue authorities of the District of Pakur, can even if carried out, would not create any right, interest and title and/or claim of possession over the plot in question beyond what the rival parties can lawfully claim. The Suit No.04/1983

was instituted before the court of Learned Sub-Judge ? I, Pakur at the instance of the plaintiff Kamrun Nisha & Ors. for a declaration of right, title and interest over the suit property i.e. land measuring 17 Kathas 11 Dhurs being Plot no.22 pertaining to Jamabandi No.11, Mouza Sunderpur, P.S./Circle Hiranpur, District Pakur out of total area of 1 Bigha 15 Katha and 10 Dhurs of land in the said plot and confirmation of possession over the same and for further declaration that the respondent no.3- Sub-Divisional Officer, Pakur had acted in excess of jurisdiction and committed illegality in reviewing its previous order that 25th April 1950 by the order dated 27th November 1962. The plaintiff had also sought for damages against defendant 1st party and prayed for an order for a perpetual injunction. The present petitioner intervened during the proceeding of the suit and was impleaded as defendant no.8 on his plea that the order of Sub-Divisional Officer, Pakur dated 27th November 1962 granting permission to sell the land in question to the plaintiff was valid and within his jurisdiction. He also had alleged that the plaintiff in collusion with the defendant nos. 4 and 5 with an intention to grab the land had not made him a party. The following issues were framed in the Suit :-

- (1) Is the suit maintainable in its present form ?
- (2) Have the plaintiffs got valid cause of action for the suit ?
- (3) Is the suit barred by principle of waiver, estoppel and limitation ?
- (4) Is the suit barred u/s 63 of the Santhal Paragans Tenancy (Supplementary) Provisions Act, 1949 ?
- (5) Have the plaintiffs valid right, title, interest and possession over the suit lands and the structures built thereon describe in schedule of the plaint ?
- (6) Had there been any partition between the recorded tenants of the disputed lands ?
- (7) Was the order of S.D.O. dated 27.11.1962 reviewing the previous order of the Sub-Divisional Officer, Pakur dated 25.4.1959 granting permission to sell the land in favour of the plaintiff illegal and without jurisdiction ?
- (8) Is the sale deed executed by defendant no.4 and 5 in favour of original plaintiff Kabir Ahmad legal and valid ?
- (9) Are the plaintiffs entitled to get decreed as claimed for ?
- (10) Are the plaintiffs entitled to any other relief or reliefs too ?

7. Learned trial court answered Issues No.5, 6, 7 and 8 as the main issues by holding that the sale deed executed by defendant no. 4 and 5 in favour of the original plaintiff Kabir Ahmad is illegal and invalid. The original plaintiff or the present plaintiff has got no valid right, title, interest and possession over the suit land and the structure, if any, built thereon. The order of Sub-Divisional Officer dated 27th November, 1962 reviewing the previous order dated 25th April 1959 granting permission to sell the land in favour of the plaintiff is legal. All these

issues were decided against the plaintiff. Issue no.4 relating to the maintainability of the suit in the light of Section 63 of Santhal Pargana Tenancy Act, 1949 was decided by holding that the suit is barred under the aforesaid provisions of Act of 1949. Consequently, Issue nos. 1, 2, 9 and 10 were decided in view of the findings and discussions recorded in respect of the other issues by holding that the plaintiffs had got no valid cause of action in the suit and the suit is not maintainable. Plaintiff is not entitled to get any relief. The Title Suit No. 04/1983 was accordingly dismissed by judgment and decree dated 10.02.2010 (Annexure-2) on contest. The Appellate Court of District Judge-I, Pakur dismissed the Title Appeal No. 03/2010 preferred against the judgment and decree passed by the Sub- Judge-I, Pakur by judgment dated 31.03.2015 (Annexure-3).

8. Evidently what was sought to be adjudicated was the claim of the plaintiff as to the right, title and interest over the suit property and confirmation of the possession. In that sense learned trial court was not called upon to adjudicate on the right, title and ownership of the petitioner herein or respondent no.5. However, discussions made therein in respect of the defence put forth by the defendant no.5 or 8 (respondent no.5 and petitioner herein) can be relied upon as a collateral piece of evidence by the parties on any such application made before the Revenue authorities or in any other court of law. Therefore, the Circle Officer, Hiranpur may consider the plea of the parties in that light on the question of demarcation of the plot.

9. However, as observed herein above, no determination on the question of right, title, ownership and possession of the parties can be arrived at in any such proceeding by the Circle Officer, Hiranpur. Either of the parties aggrieved by such exercise is at liberty to approach the appropriate court of competent jurisdiction for adjudication of its claim towards right, title and ownership or possession. Writ petition is accordingly disposed of without however interfering with the order impugned dated 08.06.2015 (Annexure-8) passed by the Sub Divisional Officer, Pakur.

10. Let it be also observed that in any such exercise of demarcation between the private parties, the revenue authorities would not exceed their jurisdiction in disturbing the possession of any of the parties except under the authority of law.