
(2023) 08 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3694 Of 2020

Pitambar Bhagat And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 03-08-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41A
Registration Act, 1908 — Section 47

Citation : (2023) 08 JH CK 0007

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : ??Mahesh Tewari, Ravi Prakash Mishra, Anil Kumar Sinha

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Instant petition has been filed impleading the State authorities as respondent nos.1-6 and also private respondent as respondent no.7. Writ application has been filed to restrain the private respondent from continuing with the construction of establishment of petrol pump of Bharat Petroleum on the land pertaining to Mauza Pakuria-76, Touzi No.35, Jamabandi No.69, Plot No.142, Area 2 Bigha 9 Katha 2 Dhur in District Pakur.

2. The case of the petitioner is that they are heirs and descendants of recorded Raiyat Bhagwati Bhagtain and in the land in question her name was recorded in Register II. During her life time, the land was in her peaceful possession and after her death, the father of petitioner inherited the land in question. After death of father, by registered partition deed dated 02.07.2018 the land was duly partitioned among the petitioners and the petitioners are in possession of their respective share by virtue of sale deed. The rent is being paid by the petitioners to the State. The immediate cause for filing the instant petition was that respondent no.7 had stored certain construction material on the land in question

for construction.

3. The respondents have appeared and filed counter affidavit. It is the case of private respondent no.7 that it is not disputed that Bhagwati Bhagtain was recorded as per Gantzer settlement. It is however averred that she had by registered sale deed bearing Sale Deed No.695/31 area 02B-00K-00Dh dated 30.04.1931 and registered Sale Deed No.1498/1931 dated 17.09.1931 area 02B-13K-16Dh transferred the land in question in favour of Shiv Jatan Ram who happens to be the grandfather of respondent no.7. The land in question was mutated vide Mutation Case No.121/88- 89 dated 31.03.1989 and the rent is being paid in Siresta of the State Government.

4. The property was partitioned between sons of Shiv Jatan Ram vide registered Partition Deed No.10238/81 dated 27.01.1982 and the lands were accordingly mutated in the name of two sons of Shiv Jatan Ram. Respondent No.7 claims 16 Katha 7½ Dhur which has been conveyed by Registered Sale Deed No.2223 of 2020 dated 21.08.2020. The father of the petitioner received share of 2 Bigha 9 Katha 2 Dhur which was however not mutated in his lifetime however, after death of his father said land, 16 Katha 7½ Dhur was transferred by his mother by virtue of Registered Sale Deed No.2223 of 2020 dated 21.08.2020 and after this sale, the land has been mutated in his name in Mutation Case No.85 of 2020-21.

5. It is submitted by learned counsel on behalf of respondent no.7 that in view of land dispute, notice under Section 41A of the Cr.P.C. was served on both sides by Pakuria Police Station vide notice dated 15.06.2019. Both parties appeared and compromise was entered wherein the petitioner undertook not to interfere with the peaceful possession of the mother of respondent no.7-Rajmanti Devi.

6. Counter affidavit has been filed by the State Authorities (R1-6) in which it has been stated that land transferred by both the sale deeds of 1931 has been mutated in the name of Shiv Jatan Ram vide Mutation Case No.121/88-89 and he possessed the land and is in its peaceful possession. Circle Officer Record No.01/2021-22 and issued notice to both sides for appearing for cancellation the Jamabandi running in the name of Bhagwati Bhagtain and Jamabandi has been cancelled. Out of the two sons of Shiv Jatan Ram, one got the land duly mutated, whereas the other son Barmeshwar bhagat did not get the land mutated of his share. Respondent no.7 is the son of Barmeshwar Bhagat. Wife of the Barmeshwar Bhagat got the land mutated in her name and she has transferred the land by registered deed of sale. Further, a case has been initiated vide Abhilek Sankhya -01/21-22 in respect of the illegal/suspicious Jamabandi running in the name of Bhagwati Bhagtain. Recommendation has been made to close the jamabandi running in her name.

7. Rejoinder to counter-affidavit filed on behalf of Respondent Nos. 1 to 6 and 7 has been filed on behalf of the petitioner. Execution of Sale Deed No. 1498/1931 executed in favour of Shiv Jatan Ram has not been disputed. Execution of Deed

No. 675/1931 is denied and disputed. It is submitted by the learned counsel on behalf of the petitioner that they are continuous peaceful possession of the land in question and paying rent to the State. The copy of the sale deed which was obtained by the petitioner is not legible and it cannot be said from this document that sale of the said of the said piece of land had been executed. There is no other supporting document of the title or possession of the petitioner. Reliance is placed on The State of Jharkhand & Others Vs Izhar Hussain SL to Appeal (C) No (s). 8108/2021 and Jitendar Singh Vs State of Madhya Pradesh SLP(C) No.13146/2021.

8. After having considered the rival submissions advanced on behalf of both sides, the dispute pertains to 2 Bigha 9 Katha 2 Dhur of land. Petitioner claims the land on two sale deed being Sale Deed No.695/31 dated 30.04.1931 and Sale Deed No.1498/31 dated 17.09.1931. Petitioner has not disputed execution of Sale Deed No.1498/31. What is disputed is execution of Sale Deed No.695/31. With respect to 2 Bigha 13 Katha 16 Dhur of land, the execution of Sale Deed No.1498/31 dated 17.09.1931 is disputed.

9. There is a presumption in favour of due execution of a registered deed of sale as held in AIR 1923 PC114. Under Section 47 of the Registration Act, the instrument comes into effect from the date of its registration. Thus, title in the property passes from the date of registration. Possession is an incidence of title and not vice versa. A party seeking possessory title has to plead and prove his case of adverse possession. Revenue records are an evidence of possession but not a proof of it. State authorities in their counter-affidavit have supported the case of Respondent no.7 that land was mutated in the favour of his predecessor-in-interest. Facts of the case relied upon on behalf of the petitioner is very different and the ratio will have no application in the present case.

10. The petitioner's case hinges on the plea that the land in question is not part of the Sale Deed No.695/31. Whereas the case of the R-7 is based on transfer of title way back in the year 1931. Simply because the father of R-7 did not take step for mutation of the land, the title of land transferred by registered sale deed cannot be extinguished. Other collateral evidence like registered partition deeds and mutation of the land are prima facie evidence of conveyance of title by the said sale deed. This Court cannot enter into the disputed question of title in this regard. The petitioner is at liberty to move Civil Court for declaration of title and recovery of possession.

Writ Petition accordingly stands dismissed. I.A. if any, is also disposed of.