
(2006) 03 JH CK 0061
In the Jharkhand High Court
Case No : S.A. No. 143 of 2005

Prem Nandan Kumar and Chandra Shekhar Kumar	APPELLANT
Vs	
Md. Asghar Hussain	RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 27, 32

Citation : (2006) 3 JCR 61

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : V. Shivnath and Manoj Kumar Sah, for the Appellant; Jay Prakash Jha and Shree Prakash Jha, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—This second appeal is against the judgment and decree passed by the 7th Additional District Judge, Fast Track Court No. IV, Godda in Title Appeal No. 24 of 2003/3 of 2004 whereby the Court below has allowed the appeal and decreed the plaintiffs suit.

2. The plaintiff filed Title Suit No. 24 of 2001 before the Subordinate Judge, Godda praying relief for declaration that the land of Plot No. 412 of Mouza Gangta Khurd measuring an area of 5 kathas is exclusive property of the plaintiff and the defendants have illegally and forcible trespassed over the same. The suit land was fully described in Schedule "A" to the plaint. The further prayer was for recovery of possession by evicting the defendants from the suit land and for permanent injunction restraining them from disturbing the plaintiffs possession.

3. The case of the plaintiff is that the suit land was settled by the Sub Divisional Officer, Godda in Settlement Case No. 344/75-76, by order dated 03.12.1975. Delivery of possession, thereafter, was effected through the process of the Court in Revenue Misc. Case No. 3 of 1976-77 of the Court of Sub Divisional Officer, Godda and the same was confirmed by order dated 15.06.1975. After getting the

settlement, the plaintiff constructed his house and has been residing and paying tax to the Notified Area Committee, Godda for his Holding No. 1334/6 as also paying rent to the State. It has been stated that the plaintiff fell seriously ill and was out for his treatment and was confined to bed. When he came back he found that his two rooms were demolished and the defendants have illegally and forcibly trespassed over the land and the house. It has been stated that the defendants has absolutely no manner of concern, right or title over the suit property and as the plaintiff is the poor retired person, the defendants have forcibly and illegally attempted to grab his property. Hence the suit.

4. The defendants appeared and contested the suit contending, inter alia, that the land was never settled by the Sub Divisional Officer, Godda and the alleged proceedings of the Settlement Case No. 3 of 1976-77 was mere a paper transaction. The defendants were not the party to the settlement case and any order passed therein or delivery of possession to them through the Court were all behind their back and is not binding on the defendants and one Sunaina Devi. It was claimed by the defendants that Sunaina Devi widow of Basudeo Mandal of Village Bhartikitt had obtained a settlement from the ex-landlord of Raj Banaki Estate as far back as on 25.03.1951 and she has constructed a house and fenced the whole area. Sunaina Devi was residing in the said house. The defendants have been in occupation of the premises on behalf of said Sunaina Devi. It has been stated that the said Sunaina Devi was a necessary party as in her absence the suit cannot proceed and was bad for misjoinder of party. The defendants denied other statements of the plaintiff as also the claim of the plaintiff.

5. After conclusion of the trial, the Trial Court held that though it is true that the settlement was made with the plaintiff, yet the defendant No. 1 Prem Nandan Kumar had been in possession of the suit property and the plaintiff is not in possession. On that basis he observed that the settlement itself is doubtful. The plaintiff, then, preferred regular appeal in the Court of the District Judge, Godda. The said appeal was ultimately heard and decided by the impugned judgment and decree dated 19th September 2003, by the 7th Additional District Judge, Fast Track Court No. IV, Godda. The Lower Appellate Court in view of the grounds raised in the appeal, has thoroughly examined the facts, evidences and materials on record and dealt with the case, issue wise. After thorough appraisal of the documentary as well as oral evidences, he found and held that the settlement in favour of the plaintiff was valid and in accordance with law and the defendants are trespassers and have got no right, title to the land. The Lower Appellate Court further held that there is a clear provision u/s 32 of the Santhal Pargana Tenancy Act for filing objection by the Sub Divisional Officer by the aggrieved person, but no such objection was filed. The Lower Appellate Court had further found that the said Sunaina Devi has got no concern with the land and her presence was not at all required and she was not a necessary party and thus the suit is not bad for non-joinder of necessary party. The Court below, taking into consideration the settlement made under the provisions of Section 27 of the Santhal Pargana Tenancy Act by the competent authority and continuous rent

receipts and other documents on record, found that the plaintiff has ably proved his case. The Lower Appellate Court, thus, decided almost all the issues in favour of the plaintiff and allowed the appeal decreeing the suit by the impugned judgment and decree.

6. Mr. V. Shivnath, learned Senior Counsel appearing on behalf of the appellants, submitted that the settlement made by the Sub Divisional Officer is not in accordance with the prescribed procedure and as such the same is vitiated in law. Learned Counsel submitted that since Sunaina Devi was a prior settlee of land, she was a necessary party and the suit is bad for non-joinder of necessary party and that learned Lower Appellate Court has committed an error in deciding the issue and holding that Sunaina Devi is not a necessary party.

7. Mr. Jay Prakash Jha, learned Senior Counsel appearing on behalf of the respondents, on the other hand submitted that the defendants have never pleaded about the irregularity in following the procedure, rather their specific plea was that the settlement itself was not made and the same was only a paper transaction. Learned Counsel submitted that the said new question of fact cannot be raised beyond the pleadings of the case at this second appeal stage. Mr. Jha next contended that learned Court below, after thorough appraisal of the evidences, has found that there was no trace of settlement in favour of Sunaina Devi and as such her presence was not at all necessary in the suit and she was neither a necessary party nor a proper party and the learned Lower Appellate Court has rightly appreciated the facts and the provisions of law and has rightly held that the suit is not bad for mis-joinder of said Sunaina Devi.

8. I find substance in the said submission of learned Counsel for the respondent.

9. On perusal of the documents, judgments and decrees and after hearing the submissions made by the learned Counsel for the parties, I find that it was not the case of the defendants that the proper procedure was not followed in the said settlement and that the Sub Divisional Officer, Godda passed the said order of settlement without following the due procedure, rather the defendants' specific case was that the said settlement was a mere paper transaction and there was no Settlement at all. In that view, there was no occasion for the Trial Court to examine and decide such issue. The same is, thus, wholly irrelevant in the context of the said case. So far as non-joinder of Sunaina Devi is concerned, the Lower Appellate Court has found that the defendants could not prove any settlement in favour of Sunaina Devi and held that she has got no concern, right over the suit land and that she was neither a necessary party nor a proper party.

10. For the aforesaid reasons, I find that the appellants could not make out any ground giving rise to any substantial question of law to be framed and decided by this Court in this Second Appeal. There is, therefore, no merit in this second appeal, which is, accordingly, dismissed.