

(2019) 09 JH CK 0049
In the Jharkhand High Court
Case No : Second Appeal No. 643 Of 2015

Raghuwar Singh Munda And Ors

APPELLANT

Vs

Radha Mohan Singh Munda And Ors

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Citation : (2019) 09 JH CK 0049

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rahul Kumar Gupta

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Rahul Kumar Gupta, the learned counsel appearing for the appellants.

2. The appellants have preferred this Second Appeal against the judgment dated 03.09.2015 and Decree dated 10.09.2015 passed by Judicial Commissioner-III, Ranchi in Title Appeal No.96 of 2005 whereby the appellate court has dismissed the appeal confirming the judgment and decree dated 03.08.2005 passed by Sub-Judge-III, Khunti by which he confirmed the Pleader Commissioner's report dated 06.10.2004 as a part of the final decree in partition suit.

3. Mr. Rahul Kumar Gupta, the learned counsel appearing on behalf of the appellants submits that originally a Title Partition Suit No.204 of 1983 was filed by the plaintiffs which has been decreed in favour of the plaintiffs and accordingly preliminary decree was prepared. Against the original decree dated 31.03.1990 in Title Partition Suit No.204 of 1983 was challenged in Title Appeal and thereafter in Second Appeal before this Court and the judgment dated 31.03.1990 has been confirmed by both the courts. In view of the judgment dated 31.03.1990 by an order dated 07.04.2004 a writ was issued to the Pleader

Commissioner for Takhtabandi of the suit property in accordance with the judgment dated 31.03.1990 and the Pleader Commissioner submitted his report dated 06.10.2004 which has been confirmed by the trial court by its order dated 03.08.2005 and accordingly the final decree was passed. Aggrieved with this final decree, the appellants preferred the Title Appeal No.96 of 2005 which has been dismissed. The appellate court has come to the finding that an objection was filed by these appellants/defendants challenging the report of the Pleader Commissioner dated 06.10.2004 in which it is said that the Pleader Commissioner has not carved out Takhtabandi in accordance with the judgment and the decree of the court and the Pleader Commissioner has totally ignored the existing possession of the parties.

4. The objection was rejected by the trial court by order dated 13.05.2005 against which the writ petition being W.P.(C) No.4142 of 2005 has been filed before this Court in which this Court directed the appellants to raise all the points in appeal. By order dated 07.04.2004 a writ was issued to Pleader Commissioner for carving out separate Takhta in the light of the decree dated 31.03.1990 in Title Partition Suit No.204 of 1983. After receipt of the writ, the Pleader Commissioner issued registered notice dated 30.05.2004 to both the parties that on 06.06.2004 at 10.00 am to remain present along with some respectable persons of the village to assist him in carving out the Takhta according to the judgment. On 13.06.2004 at 10:30 am he visited the concerned village where the plaintiffs, villagers and the defendants were present, on attendance-sheet the plaintiff and villagers put their signature but the defendants did not put signature over it and the Pleader Commissioner rendered their information regarding possession of both the plaintiffs and defendants over the respective plots and thereafter, after putting next date on 01.08.2004 he returned back to Ranchi. Again on 01.08.2004 at 10.30 A.M. he went to the village concerned and there in attendance, taken signature of the plaintiffs and the villagers present there but defendants did not put their signature in the attendance sheet and he along with plaintiffs and villagers visited most of the plots and collected information on the present possession of the suit plots and thereafter he came back to Ranchi. Further on page 8 of the Pleader Commissioner's report it is reported that Takhta-A and Takhta-B, Takhta-A for an area 146.77 acres and Takhta-B for an area 146.77 acres has been prepared by him and he has also classified the nature of land which is also described on page 8 of his report. The Pleader Commissioner has submitted his report on 06.10.2004 which has been confirmed by the learned SubJudge. After considering all these facts the appellate court came to the finding that there is no illegality so far as the final decree is concerned. Not only that in course of argument the learned counsel for the respondents offered a proposal that if the appellants are not satisfied with the Takhta allotted to them and if they say that the Takhta allotted to the respondents is better, they are ready to exchange the Takhta, but they refused to accept the proposal. This happened during the argument before the appellate court.

5. Mr. Rahul Kumar Gupta, the learned counsel argues that there is substantial question of law involved in this Second Appeal and the appeal is fit to be admitted. He further argues that the appellate court has not considered the objection of the appellants in right perspective.

6. Having heard the learned counsel for the appellants, this Court finds that the preliminary decree has already been confirmed up to the second appeal and thereafter against the final decree this Second Appeal has been preferred and both the courts-below have come to the concurrent finding with regard to the final decree. There is no substantial question of law involved in the Second Appeal, and accordingly, this Second Appeal is dismissed.