

(2010) 10 JH CK 0001
In the Jharkhand High Court
Case No : S.A. No. 339 of 2006

Sarafat Mian and Others

APPELLANT

Vs

Gulabi Mian @ Seikh Gulam Mohammad and Others

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2011) 2 JCR 206

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—The Defendant Nos. 1 to 11 of Title Suit No. 8 of 1993 are the Appellants in this second appeal.

2. The Plaintiffs-Respondents had filed the said suit in the court of Sub Judge, Bermo at Tenughat praying relief for declaration of their right, title jointly with Defendant Nos. 12 to 18 over the land appertaining to Khata No. 65, described in Schedule-B of the plaint and for declaration that the Defendant Nos. 1 to 11 and 19 to 23 have no right, title over the same. The Plaintiffs had further prayed for confirmation of their possession over the suit land and permanent injunction against the Defendant Nos. 1 to 11 and 19 to 23 restraining them from interfering with the possession of the Plaintiffs and Defendant Nos. 12 to 18 and also for declaration that the sale deeds dated 11.10.1960, 28.11.1985 and 24.11.1961 executed by Latu Mian predecessor of Defendant Nos. 1 to 3 and 10 transferring land of Khata No. 65 are illegal, void and inoperative and the same are not binding on the Plaintiffs and the Defendant Nos. 12 to 18.

3. The case of the Plaintiffs, in brief, was that one Jhari Jolha was common ancestor of Plaintiffs and Defendant Nos. 1 to 18 and 22 and 23. He died leaving behind six sons, namely, Hussaini Mian, Ramjan Mian, Budhan Mian, Gahanu Mian, Jahan Jolha and Sahdali Mian. Ramjan Mian and Budhan Mian sons of Jhari

Jolha were separated and migrated to Village-Lodhi, P.S. Gomia, District-Bokaro and Village-Arra Tola Dumarbera, P.S. Mandu, District-Hazaribagh respectively and were settled over there permanently. Johan Jolha had also separated and shifted to Village-Barkipunu and constructed his residential house there. After his death, his descendents, namely, Defendant Nos. 1 to 11 inherited the land and property of Village-Barkipunu and they have been in possession over the same. Hussain Mian also died leaving behind his three sons, namely, Jeetan Jolha, Bhukhan Jolha and Latan Jolha. Their names were jointly recorded in Khata No. 13 of Village-Mahuwatand and Khata No. 56 of Village-Barkipunu. Jeetan Jolha son of Hussain Mian in exclusion of his brother, separately, along with his uncle-Sahdali Jolha and Gahnu Jolha acquired land measuring 7.56 acres consisting of 12 plots under Khata No. 65 of Village-Mahuwatand, P.S. Gomia, District-Bokaro. Their names were recorded in the survey record of rights, but due to mistake of survey authorities, Jeetan Jolha was described as son of Jhari Jolha, who was his grand father. Land of Khata No. 13 of Village-Mahuwatand and Khata No. 56 of Village-Barkipunu was also recorded in the name of Jeetan Jolha, Bhukhan Jolha and Latan Jolha sons of Hussain Jolha jointly. Jeetan Jolha was the son of Hussain Jolha and grandson of Jhari Jolha. Sahdali Jolha and Gahnu Jolha sons of Jhari Jolha and Jeetan Jolha son of Hussain Jolha came in possession over the land of Khata No. 65. Gahanu Jolha died issueless and his interest in respect of the land of Khata No. 65 devolved upon his brother-Sahdali Jolha. After the death of Sahdali Jolha and Jeetan Jolha, Plaintiffs and proforma Defendant Nos. 12 to 18 inherited the land of khata No. 65 to the notice and knowledge of all concerned. In exercise of their right of ownership, they also sold some portion of the said land to the Defendant-purchasers, who have been in peaceful possession of the same. Defendant Nos. 1 to 11 suddenly began to claim their right over land of Khata No. 65 and tried to cultivate the suit land on 3.5.1993 on the basis of a purported order passed u/s 145 Code of Criminal Procedure They also claimed that their ancestors have sold some of the lands of Khata No. 65 by virtue of different sale deeds, which have been sought to be declared null and void by the Plaintiffs.

4. Defendant Nos. 1 to 11 contested the suit stating, inter alia, that the Plaintiffs and the Defendants are the descendents of the common ancestor, namely, Jhari Jolha, who died before survey operation leaving behind his three sons, namely, Jeetan Jolha, Jahan Jolha and Sahdali Jolha. Sons of Hussain Jolha had no relation with Jhari Jolha or his son Sahdali Jolha. Jeetan Jolha, who was one of the three sons of Jhari Jolha, died issueless after cadastral survey operation. Jhari Jolha had only three sons and not six sons, as claimed by the Plaintiffs. Gahnu Jolha was not the son of Jhari Jolha. Jeetan Jolha was son of Hussain Jolha but was not the grand son of Jhari Jolha. Defendant Nos. 12 to 18 are descendents of Jeetan Jolha. They never came in possession over the land of Khata No. 65. The Plaintiffs and the Defendant Nos. 1 to 12 have been cultivating the suit land continuously according to their convenience. The lands sold by the predecessors of the Defendants were well within the knowledge of the Plaintiffs

and others. The order in the proceeding u/s 145 Code of Criminal Procedure was passed on the basis of the evidence and in accordance with law and, thus, the Plaintiffs are not entitled to any relief.

5. Learned trial court framed several issues. Both the parties adduced evidences in support of their respective claims.

6. Learned trial court, inter alia, held in its judgment that Gahanu Jolha and Jahan Jolha was one and the same person. The names of Sahdali Jolha, Jeetan Jolha and Gahanu Jolha were recorded in respect of suit land of Khata No. 65. Defendant Nos. 1 to 11 being descendents of Jahan Jolha had got right, title over the suit land along with Plaintiffs. Latu Mian predecessor of Defendant Nos. 1 to 11 had sold the land well within the knowledge of the Plaintiffs. The Plaintiffs had not assailed the sale deeds within the period of limitation. The Plaintiffs have no valid cause of action as the suit is barred by limitation and also barred by waiver estoppels. Learned trial court dismissed the Plaintiffs' suit.

7. The Plaintiffs thereafter preferred appeal in the court of District Judge, Bokaro being Title Appeal No. 8 of 1997.

8. The said appeal was heard and decided by 1st Additional District Judge, Bermo at Tenughat. Learned lower appellate court has thoroughly discussed the facts and evidences on record and on due appraisal and scrutiny thereof has come to the finding that Hussain Mian and Jeetan Jolha were not the sons of Jhari Jolha. The Plaintiffs have been able to prove that Jhari Jolha had six sons, namely, Hussain Jolha, Ramjan Jolha, Budhan Jolha, Jahan Jolha, Sahdali Jolha and Gahanu Jolha. Jeetan Jolha was son of Hussain Jolha. Jhari Jolha died leaving behind six sons and two of them, namely, Ramjan Jolha and Budhan Jolha had migrated to different villages. Gahanu Jolha died issueless and remaining only three brothers, namely, Hussain Jolha, Jahan Jolha and Sahdali Jolha. The suit land of Khata No. 65 was not recorded in the name of Jahan Jolha, which was recorded in the names of Jeetan Jolha, Sahdali Jolha and Gahanu Jolha. The survey authorities had wrongly recorded Jeetan Jolha as son of Jhari Jolha, though he was son of Hussain Jolha. Learned lower appellate court held that Hussain Jolha was one of the sons of Jhari Jolha. Hussain Jolha had three sons, namely, Jeetan Jolha, Bhukhan Jolha and Lotan Jolha. Jeetan Jolha was not the son of Jhari Jolha. Khata No. 65 was recorded in the name of Jeetan Jolha son of Jhari Jolha. There is no evidence to establish that Jeetan Jolha son of Hussain Jolha was different entity as son of Jhari Jolha, who was recorded in the survey record in different khatas. Further, there is no evidence to establish that Jhari Jolha died issueless and that Jahan Jolha and Gahanu Jolha was one and the same person. The Plaintiffs were not the parties in the proceeding u/s 145 Code of Criminal Procedure and the order is not binding on them. Learned trial court has wrongly relied on the said order under 145 Code of Criminal Procedure. The Defendant Nos. 1 to 11 have not even pleaded that Jahan Jolha was also called as Gahanu Jolha. The evidence beyond the pleading cannot be read and relied upon. There was no admissible evidence to establish that Jahan Jolha was also

called as Gahanu Jolha as has been wrongly held by learned trial court. The finding of learned trial court that Ramjan Jolha was one of the sons of Jhari Jolha is beyond the pleading of the Defendants. Gahanu Jolha was one of the sons of Jhari Jolha, who died issueless. Jahan Jolha son of Jhari Jolha was also separated from remaining brothers of Khata No. 8 of Village-Barkipunu and his name was also recorded separately. The suit land of Khata No. 65 remained in actual and physical possession of remaining two brothers, namely, Hussaini Jolha and Sahdali Jolha and their legal heirs have got right, title and interest over the land of Khata No. 65. Sale deeds executed by Latan Jolha and other Defendants with regard to the lands of Khata No. 65 are illegal, void, inoperative and not binding upon the Plaintiffs. The Defendant Nos. 1 to 11 are descendants of Jahan Jolha and the name of Jahan Jolha does not stand recorded in Khata No. 65. Since Jahan Jolha is not recorded tenant of Khata No. 65, Defendant Nos. 1 to 11, who are heirs of Jahan Jolha have no right, title and interest over the land of Khata No. 65. Any transfer made by them with respect to the said land of Khata No. 65 is illegal, inoperative and not binding on the Plaintiffs.

9. Learned lower appellate court set aside the judgment and decree of learned trial court and allowed the appeal.

10. The Defendant Nos. 1 to 11, who are the Appellants in this second appeal, have assailed the finding of facts of learned lower appellate court, which have been recorded on the basis of the facts, evidences and materials on record. Learned lower appellate court has thoroughly discussed every aspect and has recorded sound reasons supported by the evidences on record.

11. I find no error in the said finding of learned lower appellate court attracting any substantial questions of law to be framed and decided by this Court in the second appeal.

12. This appeal is, accordingly, dismissed.