
(2016) 06 JH CK 0094
In the Jharkhand High Court
Case No : S.A. No. 415 of 2015

Shamsuddin Mian

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, Section 80
Forest Act, 1927 — Section 29, Section 30, Section 31

Citation : (2017) 172 AIC 375 : (2017) 1 JCR 207

Hon'ble Judges : Mr. D.N. Upadhyay, J.

Bench : Single Bench

Advocate : Mr. Aayush Aditya, Advocate, for the Appellant; Mr. Atanu Banerjee, G.A, for the Respondents

Final Decision : Dismissed

Judgement

Mr. D.N. Upadhyay, J. - This second appeal has been preferred by the plaintiff/appellant against the judgment dated 9th June, 2015 and decree dated 22nd June, 2015 passed and signed by learned District Judge 3rd, Hazaribagh in connection with Title Appeal No.04 of 2011, whereby judgment dated 7th January, 2011 and decree dated 17th January, 2011 passed and signed by Sub Judge-II, Hazaribagh in connection with Title Suit No. 2 of 2003 has been affirmed and the appeal stood dismissed.

2. The facts reveal from the averments made by the plaintiff in his plaint are that the land in dispute, appertaining to Khata No. 1, Plot Nos. 62 & 49 of village Bhuchungdih, P.S. Ramgarh, District Hazaribagh was initially settled in the name of Hussaini Mian (father of the plaintiff) in the year 1936. It is disclosed that Hussaini Mian reclaimed the land and cut and removed the shrubs and bushes from the land and made it fit for cultivation. Amin of the landlord measured the land and verified the reclamation made by Hussaini Mian, pertaining to Plot Nos. 49 and 62, measuring an area of 9 acres, and prepared a Parcha on 16th April, 1936 in favour of Hussaini Mian. The Manager, being satisfied with the

reclamation, granted Hukumnama in favour of Hussaini Mian on 27th October, 1936 and confirmed the settlement against the land in question. Hussaini Mian till his lifetime remained in actual physical possession over the land, morefully described in Schedule-A of the plaint. After abolition of Jamindari and enactment of Bihar Land Reforms Act, Hussaini Mian was recognised as a raiyat for Schedule-A land by the State of Bihar. It is further case of the plaintiff that the name of Hussaini Mian also appeared in Register-II. After death of Hussaini Mian, the plaintiff came in possession and he has started enjoying his peaceful possession over the land in question without any hindrance from any corner. It is further contended that the plaintiff was forced to file a petition before the Land Acquisition Officer, stating that the land of Schedule-A is a raiyati land of plaintiff and it cannot be acquired for the Central Coalfields Limited. The said petition was marked and numbered as Case No.8 of 1985-86. After enquiry the land was declared as raiyati land of the plaintiff. The Additional Collector also examined Hukumnama, Parcha, Jamindari Rent Receipts as well as State rent receipts and the report called for by the D.F.O. (East) and after considering the same Schedule-A land of the plaintiff was declared as raiyati land. When the Forest Guard started creating hindrance against paddy grown by the plaintiff on Plot No.62, area measuring six acres, cause of action arose for the suit and the plaintiff filed a suit for declaration of his title over the land in question. It was also contended that the plaintiff had filed the suit without giving notice to the defendants under Section 80 C.P.C. and prayed for exemption from giving notice to the defendants, as the relief sought for by the plaintiff was urgent and immediate and the plaintiff was not in position to wait for two months. There was apprehension that the defendant may cause damage and destroy the suit land.

3. On being noticed the Defendant No.1-the State of Jharkhand through the Deputy Commissioner, Hazaribagh and Defendant No.2-Divisional Forest Officer, Ramgarh appeared and filed their written statements, stating therein that the suit is not maintainable and the same is liable to be dismissed in limine. The plaintiff has got no cause of action for the suit. The suit is liable to be dismissed for want of notice under Section 80 CPC and it is hit by Section 34 of the Specific Relief Act. It is contended that the story of measurement and verification by Amin of the ex. Landlord is incorrect and they had no authority to issue any Parcha. According to Section 4(h) of the Bihar Land Reforms Act, 1950, all those settlements stood annulled. The grant of Hukumnama by the Manager of Ramgarh Wards Estate in confirmation of settlement is incorrect, fraud and antedated document. As a matter of fact, the suit land is duly constituted as protected forest under the provision of Indian Forest Act, 1927 and notification to that effect was duly issued under Section 29 of the Indian Forest Act. Further notification under Section 30 of the said Act was issued and the publication of such notification under Section 31 of the Act was also done by the Collector in local vernacular. It is Contended that the plaintiff admits that the land in question was recorded as Gairmazarua in the revenue record. The ex-landlord has no right to settle the property in favour of any individual. No return by the landlord in

favour of either Hussaini Mian or in favour of the plaintiff was ever issued. If any entry made in Register-II, that is forged and fabricated, in collusion with Karamchari, without any order of the competent authority and that entry does not confer any right, title and interest. Likewise, issuance of rent receipt by the State of Bihar also does not confer any right, title in favour of the plaintiff and he cannot claim his right, title and interest on the basis of those rent receipts.

4. The plaintiff as well as the defendants had produced evidences, both, documentary and oral before the learned Sub Judge and the learned Sub Judge while deciding the suit has elaborately discussed the evidence adduced from both sides under Issue Nos. V and VI.

5. Learned counsel for the appellant has submitted that the First Appellate Court has not dealt with the documents and the evidences brought by the plaintiff on record. Learned Lower Appellate Court has also not applied his judicial mind and no reasoning has been assigned for coming to the conclusion. Learned Lower Appellate Court has not given independent finding on the basis of evidences and materials available on case record. It was submitted that the learned Lower Appellate Court has almost summarized the findings of the Trial Court and dismissed the appeal. There are substantial questions of law involved because the First Appellate Court has failed to discharge its obligation.

6. I have carefully gone through the memo of appeal and the judgments of both the courts below and found that the Trial Court has elaborately discussed and dealt with each and every issue involved in the suit. The Trial Court has given sound reasoning for disbelieving the contentions of the plaintiff and assigned cogent reason for refusing the documents brought on record by the plaintiff while discussing Issue Nos. V and VI. After perusing the judgment of the First Appellate Court, it could not be said that the learned District Judge has not applied his judicial mind. It is admitted that the Lower Appellate Court has not repeated the discussions and findings made by the Trial Court in its judgment, but the learned District Judge has rightly applied his judicial mind while confirming the findings of the Trial Court in Paragraphs Nos. 13 to 16 of the judgment impugned. The Lower Appellate Court has also reproduced the case of the plaintiff and the case of the defendant, in brief, in Paragraph Nos. 2 and 3. The issues settled by the Trial Court have also been rerecorded in the judgment of the Appellate Court. It is always not necessary to reproduce the substance of deposition of witnesses in the judgment in appeal. What I mean to say is that the Trial Court as well as First Appellate Court have clearly dealt with the facts and evidences brought on record and concurrent findings of both the courts below are available in the judgments pronounced. Since the Lower Appellate Court was in agreement with the findings of Trial Court, it was not needed to reproduce the evidence. It is not a case of reverse.

7. I, therefore, do not find either from the memo of appeal or from the judgment impugned that any substantial question of law is required to be formulated for just decision of this appeal.

8. Considering concurrent findings of the courts below, this second appeal is devoid of any merit and the same stands dismissed at the stage of admission itself.