

(2001) 04 JH CK 0047

In the Jharkhand High Court

Case No : CWJC No's. 3328, 3329 and 3330 of 1999 (R)

Sinni Kui

APPELLANT

Vs

Commissioner, South Chhotanagpur Division Ranchi and
Others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71

Citation : (2001) 04 JH CK 0047

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Jai Prakash, Arshad Hussain and Prashant Kumar, R.K. Merathia, GP 2, Sailesh, Asit Baran Mahto and M. Patra, JCs. to GP 2, for the Appellant; Jaya Roy and Tapas Roy, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhya, J.—All the three cases arise out of common order passed by learned Commissioner. South Chhotanagpur Division, Ranchi in Revenue Revision Nos. 124/85; 125/85 and 126/85. In all of them, the petitioner being common, they were heard together and are being disposed of by this common order.

2. The case of the petitioner is that her brother Late Gora Ho was the recorded tenant of the lands in question, who died issueless. The lands having changed hands to other, her other sister. Late Raimuni Kui filed an application u/s 71-A of the Chhota-nagpur Tenancy Act for restoration of the land in question. One SAR Case No. 4/78-79 was instituted in respect of land measuring 1.25 acres of Plot No. 135 under Khata No. 6 situated at village Devgirisai. Another SAR Case No. 3/78-79 was instituted in respect to 1.20 acres of land of Plot No. 135 under Khata No. 6 within the same village. The third case being SAR Case No. 5/78-79 was instituted in respect to 1.30 acres of same plot under same Khata situated in the same very village.

3. All the three SAR cases for restoration were allowed by three different orders, all, dated 6th February, 1984.

4. The contesting respondents being aggrieved, preferred three sets of appeal being SAR Appeal Nos. 100, 101 and 102 all of 1983-84. They were heard together and by common order, dated 29th March, 1985 they were dismissed.

5. Thereafter, when the contesting respondents moved before the revisional authority in Revenue Revision Nos. 124/85; 125/85 and 126/85, by impugned common order, dated 31st August, 1998, they were allowed and the orders passed by the lower Court were set- aside.

6. After the death of the applicant before the Court below. Smt. Raimuni Kui, the petitioner, herein, being sister of Smt. Raimuni Kui, claiming herself to be the heir and legal representative, moved this Court by filing three sets of writ petitions challenging the revisional orders.

7. The case of the respondents is that they purchased their respective portions of lands out of a big plot from Rudra Prasanna Kar and Parsu Nath Kar by registered sale-deed in the year 1966. The said Rudra Prasanna Kar and Parsu Nath Kar had right and title over the land and obtained delivery of possession in pursuance of a decree passed in Title Suit No. 350/58. In Misc. Case No, 288/70, the possession was declared in the name of the contesting respondents.

8. The petitioner claims right and title being sister of original land-holder Late Gora Ho, who was stated to be the recorded tenant. Before the lower Court, the sister of petitioner Late Raimuni Kui (original applicant) alleged that the Title Suit No. 350/58 was collusive, but when the judgment was delivered by the first Court, vide its order, dated 5th February, 1984, it rejected such plea, as was taken by Late Raimuni Kui. The petitioner for restoration was allowed merely on the ground that no permission u/s 46 was obtained from the Deputy Commissioner and thereby, the transfer was void. The appellate Court, while rejected the appeal preferred by contesting respondents, held the title suit as not maintainable, as the Deputy Commissioner was not a party to the said suit.

9. From a bare perusal of the impugned revisional order, "dated 31st August, 1998, it will be evident that the revisional authority took into consideration the fact that the suit was fully contested by parties and by no stretch of imagination, it can be termed as collusive. The Deputy Commissioner was not a necessary party, was the finding given. As the suit was of the year 1958 and the provision to add Deputy Commissioner as party came into force, for the first time, after Schedule Area Regulation, 1969. It was in the aforesaid background, it was held that the land, in question, do not belong to the members of the Scheduled Tribe and thereby, there was no question of applicability of the provision of Section 71-A of the CNT Act, was the finding given by the Commissioner.

10. The counsel for the petitioner relied on the Supreme Court's decision in Pandey Oraon v. Ram Chandra Sahii and Ors. reported in 1992 (1) PLJR 89 SC).

wherein the Supreme Court held that in Section 71-A, in the absence of a definition of "transfer" and considering the situation in which exercise of Jurisdiction is contemplated, it would not be proper to confine the meaning of "transfer" to transfer under the Transfer of Property Act or a situation where "transfer" has a statutory definition.

11. What exactly is contemplated by "transfer" in Section 71-A is where possession has passed from one to another and as a physical fact, the member of the Scheduled Tribe, who is entitled to hold the possession and a non-member has come into possession would be covered by the transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of Section 71-A.

12. However, the aforesaid decision in Pandey Oraon (supra) cannot be made applicable in the case of the petitioner, as her brother Late Gora Ho himself was not entitled to hold the possession over the lands in question, the right and title having declared in favour of Rudra Prasanna Kar and Parsu Nath Kar, the vendor of the respondents.

13. I find no error apparent on the fact of the record or illegality in the impugned revisional orders.

14. The writ petitions are, accordingly, dismissed.

15. Petition dismissed.