

(2019) 08 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (c) No. 5034 Of 2016

Sita Ram Mandal

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Santhal Pragana Tenancy Act, 1949 — Section 42
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 JH CK 0007

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ashish Verma, Ankit Kumar

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the order dated 11.07.2013 passed by the Commissioner, Santhal Pragana Division, Dumka is under challenge, by which, the order passed by the appellate authority in in R.M.A. No.11/1997-98 has been affirmed by not admitting the appeal.

2. The brief facts of the case of the petitioner is that the land in question is recorded in khatiyani in the name of Late Gujar Mandal grandson of Bicho Mandal whereas the petitioner is also grandson of Girdhari Mandal who was full brother of father of recorded tenant Gujar Mandal. Accordingly the petitioner and the respondents are from common ancestor late Bichcho Mandal. The further case of the petitioner is that one Bipin Mandal father of Gujar Mandal had two brothers namely Amrit Mandal and Gridhari Mandal, Gridhari Mandal had four sons namely, Dukho Mandal, Nemani Mandal, Bhutali Mandal and Jageshwal Mandal. The petitioner Bholu Mandal (Now Deceased) son of Nemani Mandal and Sitaram Mandal are decedent of common ancestor Bichcho Mandal. The petitioner has come in peaceful possession of the lands in dispute and are paying rent and having rent receipt up-to-date in lieu thereof.

3. That the respondent No.6 Indu Mandal claiming himself to be adopted son of late Kalti Mandalain W/o late Gujar Mandal who was the recorded tenant of the land in dispute has filed R.E. Case No.06/1996-97 before the Sub-Divisional Officer, Dumka who by calling upon the record from Circle Officer, Jarmundi, pursuant thereto a report has been submitted including short genealogy as shown the relationship between the parties showing therein that the parties are common ancestors and accordingly the proceeding was dropped with an observation to the parties to approach before the competent court of civil jurisdiction for title over the land in question is in dispute.

4. The private respondent namely, Indu Mandal, respondent No.6 aggrieved with the order passed by the Sub-Divisional Officer, has approached before the appellate authority assailing the order passed in R.E. Case No.06/1996-97 which was registered as R.M.A. Case No.11/1997-98 and the appellate authority has set aside the order passed by the original authority with s direction to handover the possession of the land in favour of the private respondent namely Indu Mandal, against which, the petitioner has preferred revision which was disposed of by not admitting the revision since the petitioner has failed to agitate any valid ground for the same vide order dated 11.07.2013 which is under challenge in this writ petition.

5. Mr. Ashish Verma, learned counsel appearing for the petitioner, has raised the ground in assailing the order dated 11.07.2013 that the said order is without any reason and therefore, not sustainable in the eye of law.

6. Mr. Ankit Kumar, learned A.C. to G.P.-IV representing the State of Jharkhand, on the strength of counter affidavit filed on behalf of the State of Jharkhand, has submitted that the stands recorded in the Gantzer's settlement in the name of Gujar Mandal son of Late Bipan Mandal and the writ petitioner is the son of late Kanti Mandal but claims that he and the respondent No.6, Indu Mandal comes from common ancestor late Bichu Mandal and as such he came in peaceful possession of the disputed land whereas the respondent No.6, Indu Mandal claiming the land on the basis of adoption made by late Kolti Mandalain W/o Gujar Mandal who has filed Rent Eviction Case No.6/1996-97 before the Sub-Divisional Officer, Dumka for eviction of Bhola Mandal, Digember Mandal, Sitaram Mandal and Bhado Mandal under Section 42 of the Santhal Pragana Tenancy Act, 1949 claiming therein that these persons are in illegal possession of Plot No.477 having an area of 1 Bigha, 12 Katha, 19 Dhurs, the Sub-Divisional Officer has ultimately came to the finding that the matter pertains to the serious dispute over the property in question, therefore, has declined to adjudicate upon the issues with an observation to approach before the competent court of civil jurisdiction, against which, an appeal was preferred before the Deputy Commissioner, Dumka it was later on decided by the Additional Collector, Dumka on 23.08.2010 who has set aside the order of Sub-Divisional Officer, Dumka and passed eviction order.

The petitioner approached before the revisional authority who has declined to

admit the revision against which the present writ petition has been filed.

It has been stated therein that the said Indu Mandal, in the capacity of adopted son of late Kolti Mandalain W/o late Gujar Mandal is claiming the landed property of the share of the Gujar Mandal to the extent of 1/5th thereof, and as such merely because the petitioner and the others are having common ancestors the share which falls in favour of the said Gujar Mandal will be inherited by Indu Mandal in the capacity of his adoption by the wife of the late Gujar Mandal.

7. Learned counsel for the State respondent has submitted that the petitioner has questioned the genuineness of the adoption and therefore, it cannot dispute the title of the said Indu Mandal of the share which was in favour of the said late Gujar Mandal and keeping this fact into consideration the appellate authority has passed a detailed reasoned order.

The petitioner, however, has tried to make out the case on the basis of Panchnama which has been referred before the appellate authority but the appellate authority in absence of any panchnama having disputed, has refused to take cognizance thereof and as such the petitioner cannot agitate the plea by way of filing the said panchnama before the revisional authority for its consideration.

He further submits so far as the submission of the learned counsel for the petitioner that the revisional order is without no reason but he in dispute, has submitted that the revisional order cannot be said to be without any reason as because the petitioner is taking the ground mainly on the basis of the panchnama but the said punchnama having not admitted, therefore, the revisional authority if has not made any reference of the said document, cannot said to have committed any illegality, further it is evident from the revisional order that the grounds of appeal as has been agitated before the revisional forum is based upon the premises and therefore, it cannot be said that the revisional authority has not admitted the revision without assigning any reason.

In view of such submission the order passed by the revisional authority may not be interfered with.

8. Having heard the learned counsel for the parties and on appreciation of their rival submissions the undisputed fact in this case is that the petitioner is claiming the land of the share of one Gujar Mandal.

The respondent No.6, is the adopted son of Kolti Mandalain W/o late Gujar Mandal, in whose favour 1/5th share of the entire property has come as would appear from the order passed by the Circle Officer as contained under Annexure-1.

The Circle Officer taking the ground of common ancestor, declined to pass any effective order for evicting the petitioner from landed property in question, against which, an appeal was filed being R.M.A. No.11/1997-98 wherein the petitioner has filed panchnama said to have been agreed by the said Indu

Mandal, the respondent No.6 who according to the petitioner, has agreed to relinquish his right over the property but the said panchnama has been disputed by the said Indu Mandal and therefore, no such application has been filed for joint compromise for its consideration basis upon which the order passed by the Circle Officer has been set aside with a direction upon the petitioner to get the land vacated in favour of the said Indu Mandal, against which, revision has been preferred. The petitioner is questioning the revisional order mainly on the ground that the same is without any reason.

9. The question of assigning the reason by the appellate or the revisional authority, cannot be disputed but the question herein is that before the revisional, detailed order passed by the appellate authority has been questioned wherein the contention agitated by the petitioner with respect to common ancestor and by virtue of common share of the property in question has been negated by the appellate authority on the ground that the said Indu Mandal being the adopted son of Kolti Mandalain W/o late Gujar Mandal, in whose favour 1/5th Share of the common property has come, therefore, the appellate authority has come to a conclusive finding that in the capacity of adopted son of Kolti Mandalain the right upon the 1/5th share of the property fall under the share of said late Gujar Mandal will be inherited by the said Indu Mandal.

10. The petitioner is relying upon the panchnama said to have been executed in between the petitioner and the said Indu Mandal but as it transpires from the appellate order the said panchnama has seriously been disputed by the said Indu Mandal, and therefore, the same has not been considered and hence, the appellate authority by reversing the order passed by the Circle Officer has directed for handing over the possession of the land in favour of the respondent No.6, Indu Mandal. The revisional authority has found no justifiable ground to admit the revision since according to the revisional authority the ground of appeal is based only on premises.

11. This Court, in course of argument as has been advanced on behalf of the petitioner, has also gathered that the petitioner is raising the claim on the basis of said panchnama but if the content of the panchnama has itself been disputed by the said Indu Mandal no reliance can be given upon the said panchnama, save and except, the panchnama, no further ground has been agitated before the revisional authority, however, he has also raised orally that the said Indu Mandal is claiming right over the property by way of adoption but it nowhere reflects from the pleading that the said adoption has been challenged before any competent authority, therefore, the adoption being a conclusive no relief can be granted by raising the oral objection to the said adoption.

12. So far as the question of assignment of reason in the revisional order is concerned, since the appellate authority has passed a well detailed reason and the revision has been preferred questioning the order passed by the appellate authority which has been held to be based upon surmises and as such the said order cannot be said to be without any reason particularly for the reason that the

reason depends upon the pleading but the petitioner has not filed the memo of revision with the writ petition for its appreciation as to what ground has been taken by the petitioner in raising the revision thereof and in absence thereof it cannot be appreciated by this Court that the order passed by the revisional authority is without any reason.

13. Moreso, since the appellate authority has passed a detailed order and revisional authority has found no ground to admit the appeal since the only ground is upon the panchnama which is under dispute, therefore, this Court is of the view that no reason is available to show any interference with the impugned order.

14. Accordingly, the writ petition fails and is dismissed.