
(2010) 04 PAT CK 0019
In the Patna High Court

Smt. Parwati Devi, Surendra Prasad Sah and Manoj Kumar Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Bhudan Yagya Committee Act — Section 11
Sonthal Parganas Act, 1855 — Section 2

Citation : (2010) 1 PLJR 959

Hon'ble Judges : Shiva Kirti Singh, J;Chandra Mohan Prasad, J

Bench : Division Bench

Judgement

Shiva Kirti Singh and Chandra Mohan Prasad, JJ.—Heard the parties.

2. This appeal under Clause (10) of the Letters Patent Act has been preferred against the judgment of a learned single Judge of this Court dated 12th October, 1999 whereby writ petition preferred by the appellants bearing C.W.J.C. No. 5267 of 1990 has been dismissed on the ground that the writ court cannot enter into disputed points of facts and no interference could be made with the impugned order dated 1.5.1989 passed by the Commissioner Santhal Parganas, Dumka passed in Revenue Misc. Appeal No. 51 of 1983-84 as contained in annexure-1 in absence of any illegality, impropriety on the face of the said order.

3. The essential facts which are necessary for decision in this appeal relate to an interesting scenario beginning from an event of 1933 when two co- villagers Triveni Sah and Bhoot Nath Mukherjee decided to exchange some of their lands. From the records it appears that Bhootnath Mukherjee, father- in-law of respondent No. 6 and grand-father of respondent No. 8, Ashutosh Mukherjee(who is also now dead and his heirs are on record) filed an application for exchange of his 6 Bighas, 10 Kathas and 13 Dhurs of lands of Jamabandi No. 45 and Plot Nos. 236,237,238 and 192 with 7 Bighas,7 Kathas and 13 Dhurs of lands of Ganpat Sah father of Triveni Sah and grand-father of Chakradhar Sah whose widow Parwati Devi is appellant No. 1, her son Manoj Kumar Sah is

appellant No. 3 and another son of Triveni Prasad Sah, namely, Surendra Prasad Sah is appellant No. 2 in this appeal.

4. On the application of Bhootnath Mukherjee, Exchange Case No. 09 of 1933-34 was entertained by the concerned Sub-divisional Officer, Dumka who appears to have called for reports from the Panchayat and Amin. Their reports are dated 17-4-1933 and 12-6-1933 contained in annexures 2 and 3 to the writ petition. By order dated 12-6-1933 contained in annexure-4, the Sub-divisional Officer on considering the reports allowed the exchange on the ground that it was beneficial to the parties. A dispute arose with regard to some plots which Bhootnath Mukherjee had given in exchange and over which possession of Triveni Sah was obstructed. He filed Title Suit No. 23 of 1939 in the Civil Court of competent jurisdiction. That suit ended in a compromise under which the exchange was accepted by the parties. The order of the Court dated 2-12-1939 whereby decree on consent was passed has been annexed as annexure- 6 to the writ petition.

5. For about 18 years there was no dispute in relation to the lands under exchange but in 1957 Vyomkesh Mukherjee, a brother of Bhootnath Mukherjee donated the exchanged lands of Bhootnath to Bhudan Yagya Committee. Against such donation Triveni Sah filed objection case No. 1908 of 1958-59 before the Deputy Collector Land Reforms (D.C.L.R.) u/s 11 of the Bhudan Yagya Committee Act claiming his title and possession over the concerned land by virtue of exchange as accepted and permitted in Exchange Case No. 09 of 1933-34. By order dated 25-7-1969 contained in annexure-7 the D.C.L.R. accepted the title and possession of Triveni Sah and disposed of the objection case directing exemption of donated lands from Bhudan Yagya Committee.

6. The writ petitioners/ appellants have brought on the record of the writ petition two documents contained as part of annexure-13 and part of annexure-14 to show that due to default in payment of rent by Bhootnath Mukherjee for exchanged plot No. 143 a case bearing R.E.Case No. 1166 of 1937-38 was initiated before the S.D.O. Dumka. Since Bhootnath failed to pay rent in spite of service of notice, the State acquired the land and settled it to one Paddu Sah raiyat of Jamabandi No. 60 who got delivery of possession through Amin as evidenced by Annexure-14. Annexure-13 contains an order dated 21-4-1942 whereby one Ram Sunder Chaudhary obtained delivery of possession pursuant to a decree in Title Suit No. 32 of 1941 over exchanged plot No. 291. The said suit was decreed ex parte. It is the case of the appellants that they continued in possession of the lands which they had got by exchange in 1933 and paid rent to the Ex-land-lord and at the time of vesting the return was submitted in their name and Jamabandi was created by the State of Bihar in their favour which also issued rent receipts. But the descendants of Bhootnath allowed others to get title and possession over plot No. 291 as well as plot No. 143 which they had got in exchange.

7. The present dispute has its genesis in the revisional survey in which when purcha was prepared in respect of exchanged plots measuring 6 Bighas,10

Kathas and 13 Dhurs in favour of the appellants/petitioners, respondent No. 6 filed an objection before the Assistant Settlement Officer, Dumka. A copy of the objection available on record shows that she alleged that the appellants were in illegal possession over the lands because according to her the exchange of 1933 was illegal because it was not beneficial for the parties particularly for her ancestors. On this ground the Assistant Settlement Officer, Dumka allowed the objection of respondent No. 6 vide order dated 27-8-1982 annexed as annexure-8 to the writ petition. He proceeded to annul the exchange allowed by Exchange Case No. 09 of 1933-34 without considering the reports available in the records of that exchange case. One of the grounds for holding that the exchange was illegal and not beneficial, was an allegation by respondent No. 6 that some lands received from Triveni Sah were actually lands of the Government. This was accepted without looking into the reports of the Panchayat and the Amin. The latter shows that the nature of the lands had changed and it was settled long back in favour of the ancestors of the petitioners/appellants.

8. Against the order of the Assistant Settlement Officer the appellants filed settlement objection case No. 17/82 in the court of Settlement Officer, Santhalpargana, Dumka who after notice and hearing the parties set aside the order of the Assistant Settlement Officer, Dumka vide his order dated 12-9- 1983 which are contained in annexures-9 and 10 to the writ petition. Against his order the respondents filed an appeal before the Commissioner, Santhal Pargana which was registered as Revenue Miscellaneous Case No. 51 of 1983-84. The appellants claim to have filed 15 documents as per list contained in annexure-11 and it is their grievance that without looking into those documents and their legal effect the learned Commissioner by his impugned order contained in annexure-1 to the writ petition dated 1-5-1989 set aside the appellate order of the Settlement Officer.

9. Learned Counsel for the appellants has raised several grounds to assail the order of the Assistant Settlement Officer which was restored by the impugned order of the Commissioner, which has also been challenged on the same very grounds. On facts it was highlighted that the appellants have been paying rent for the lands which they received in exchange, for several decades and these documents along with the order of the D.C.L.R. passed u/s 11 of the Bhudan Yagya Committee Act have been arbitrarily ignored for no good reasons and as an issue of law it has been urged that without there being any challenge to the order of the S.D.O. passed in Exchange Case No. 09/33-34 and the compromise decree in title suit No. 23 of 1939 through any appropriate proceeding or a properly constituted suit, such order and decree could not have been set aside or ignored by a Revenue Officer exercising power of Assistant Settlement Officer or of superior officer in course of a settlement proceeding under the Santhal Parganas Settlement Regulation No. 3/1972 (hereinafter referred to as 'the Regulation') . While referring to the discussions and findings made by the learned single Judge in the order under appeal, it was submitted that the learned single Judge failed to appreciate the provisions of the Regulation, particularly

those in Sections 5-A,9 and 25. It was further pointed out that the learned single Judge has failed to notice that Section -4 which vested the officers under Regulation with the power of civil court was repealed long back. Further, although Section -5 creates a bar on jurisdiction of civil court during settlement, it requires that suits filed during the period when settlement is going on, shall not lie in any civil court but they shall be filed before an officer appointed by the State Government u/s 2 of the Santhal Parganas Act, 1855 or u/s 10 of the Regulation. It was submitted and pointed out that under section-5-A while entertaining a suit the competent officer under the Santhal Parganas Act or under the Regulation may transfer the same to a civil court in appropriate cases, either on the prayer of the parties or on his own motion. On the basis of Section-9 of the Regulation it was pointed out that decision in a suit may have a vast and different scope and ambit but the purpose of settlement, which would include entertaining an objection in the nature filed by respondent No. 6 or her husband, is only to ascertain and record the various interest and rights. According to learned Counsel for the appellants the Regulation vests State Government with a power to order settlement and its purpose is limited to ascertaining and recording the interest and rights in the land. Hence, the settlement officer while hearing and deciding an objection in the course of settlement proceeding cannot treat mere objections as suits. Hence, in the present case the settlement authority could not have gone into the issue of legality and validity of order passed in the exchange case No. 09 of 1933-34 or into the validity and legality of compromise decree passed on 2-12-1939 in Title Suit No. 23 of 1939.

10. The crux of the submission advanced on behalf of the appellants is that a mere objection in course of settlement proceeding cannot be treated to be a suit under the Regulation and in course of disposal of such objection the authority under the Regulation will not have the power of a civil court so as to annul a decree of a competent civil court which can be set aside only through a properly constituted suit to specifically challenge such a decree on permissible grounds with due regard to period of limitation.

11. On behalf of private respondents learned Counsel submitted that besides a finding that the deed of exchange was not beneficial to the parties, further findings have also been given to the effect that the deed of exchange was not effective and respondent No. 6 or her predecessors in interest continued to be in possession. According to him the authorities under the Regulation had the jurisdiction to set aside the compromise decree of the civil court or at least to hold that the decree had no sanctity in the eyes of law. On facts it could not be shown that there was any properly constituted suit filed by respondent No. 6 or her husband to challenge the order of the S.D.O. passed in Exchange Case of 1933-34 or to challenge the compromise decree of the civil court passed in the year 1939.

12. On having considered the relevant facts noticed above and the rival

submissions, we are of the view that in absence of a properly constituted suit meeting all the legal requirements such as limitation etc. the compromise decree passed in Title Suit No. 23 of 1939 could not have been set aside or ignored by the authority exercising power on account of a mere objection in course of a settlement proceeding under the Regulation. In that view of the matter, we have no option but to hold that the order passed by the Assistant Settlement Officer dated 27-8-1982 contained in annexure-8 to the writ petition as well as the order of the learned Commissioner dated 1-5-1989 contained in annexure-1 to the writ petition are in excess of legal powers available to these officers under the provisions of the Regulation, in absence of a suit which could be tried as per provisions of the Regulation or which could be re-sent to the civil court. While considering an objection in a settlement proceeding, these authorities could not have ignored the legal effects of compromise decree of 1939 passed in Title Suit No. 23/39. Since these orders have to be set aside in view of aforesaid finding on the ground of lack of power, it is not necessary for us to go into issues of facts which according to the learned single Judge should not have been gone into in exercise of writ jurisdiction. As a result, this appeal succeeds and the order under appeal is set aside including the order of the Assistant Settlement Officer contained in annexure-8 to the writ petition and the order of the Commissioner contained in annexure-1 to the writ petition. There shall be no order as to costs.

13. Since we have not gone into issues of facts, as an ample precaution it is observed that if so advised the private respondents may pursue their remedies through a properly constituted suit but only in accordance with law.