
(2025) 02 JH CK 1244
In the Jharkhand High Court
Case No : Second Appeal No. 243 Of 2019

Smt. Sumitra Devi

APPELLANT

Vs

Mahadeo Tirkey

RESPONDENT

Date of Decision : 18-02-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 21 Rule 99, Order 21 Rule 101
Chota Nagpur Tenancy Act, 1908 — Section 48(4), 71A

Citation : (2025) 02 JH CK 1244

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Rohitashya Roy, Tarun Kumar Mahato

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. This second appeal has been filed against the judgment dated 13.03.2019 and decree signed on 25.03.2019 passed by learned Additional Judicial Commissioner-X, Ranchi in Civil Appeal No.28 of 2015, whereby the said appeal has been dismissed. The judgment and decree dated 29.05.2015 was passed by learned Civil Judge (Sr. Div.)-VIII, Ranchi in Misc. Case No.04 of 2006, whereby the objection filed by the present appellant under Order-XXI, Rule-99 and 101 read with Section 151 of Code of Civil Procedure was dismissed. The aforesaid petition was filed before the executing court dealing with execution of judgment and decree passed in Partition Suit No.99 of 1995 and admittedly, the appellant was not a party in the partition suit.

Arguments of the appellant on the point of formulating substantial question of law in this appeal.

2. The learned counsel for the appellant has submitted that the appellant was not a party in the partition suit and at the stage of execution the appellant filed a petition under Order XXI Rule 99 and 101 read with Section 151 of CPC by

stating that the appellant is in possession of the property. The learned counsel submits that the appellant is in possession of the property and she has already perfected her title by adverse possession irrespective of the order of eviction passed under Section 71-A of the Chota Nagpur Tenancy Act, 1908 to evict the appellant from the property. The learned court ought to have decided the objection particularly with regard to adverse possession and Section 48(4) of the Chota Nagpur Tenancy Act, 1908 which prescribes a period of limitation of 12 years to file a petition seeking eviction of a person in possession. The learned counsel has submitted that the executing Court has refused to decide the issue on the ground that there is already an order of eviction passed in SAR Case No. 389 of 2004-05 and that the revision is pending before the Commissioner arising out of the order of eviction passed in SAR Case No. 389 of 2004-05 and the said authority would have the jurisdiction to decide as to whether the order of eviction passed under Section 71-A was barred by limitation. The learned counsel has submitted that the Civil Court had the necessary jurisdiction to decide all the points of objection. The learned counsel has submitted that the Appellate Court has not considered the issue regarding Section 48(4) of the Chota Nagpur Tenancy Act, 1908.

3. However, during the course of hearing, it is not in dispute that an authority passing an order under Section 71-A of Chota Nagpur Tenancy Act, 1908 also has the jurisdiction to consider the point of limitation in connection with prayer for eviction made through an application under Section 71-A of the Chota Nagpur Tenancy Act, 1908 and the revision arising out of the orders passed under Chota Nagpur Tenancy Act, 1908 was pending before the competent authority .

4. At this, the learned counsel has also submitted that in case this court is not inclined to admit this appeal, it requires an observation that the appellant may still have a remedy in the revision pending before the revisional authority under the Chota Nagpur Tenancy Act, 1908 .

Findings of this court.

5. It was the case of the objector (appellant) that the suit land was settled through Chhaparbandi right in favour of Smt. Saraswati Devi by Chhotka Mahadeo Oraon, the ancestor of the respondent, on 26.06.1946 and she came in possession of the said property and regularly paid tax and obtained receipts thereof. It was further the case of the objector that Smt. Saraswati Devi executed a registered deed of sale in favour of the objector on 09.06.1964 and immediately thereafter the objector came in possession of the suit property and constructed a building. As back as in the year 1965, a criminal case was instituted by Ranchi Improvement Trust against the objector alleging unauthorized construction which was registered as case no.C-II-113/65. It was also disclosed that the respondent had filed one S.A.R. Case No. 389 of 2004-05 seeking restoration of land in his favour under Section 71(A) of Chotanagpur Tenancy Act,1908.

6. On the other hand, the case of the respondent, who filed a show cause in Misc. Case No. 04 of 2006, was that the objection was not maintainable. The respondent asserted that delivery of possession has already been affected to the respondent with respect of land and building as per Nazir's report and the statement of the objector regarding delivery of only symbolic possession was not correct.

7. The learned Executing Court framed the following issues for consideration:

- i. Whether the petition of the petitioner is maintainable?
- ii. Whether the petitioner has got right, title, interest and possession over the property?
- iii. Whether the opposite party can claim the land after the period of limitation prescribed under section 48 of the C.N.T. Act?
- iv. Whether the decree passed in P.S. 99/1995 is binding upon the petitioner?
- v. Whether the execution of the decree the opposite party was given actual possession of the property?

8. The learned Trial Court recorded that as per Exhibit-3 the property was settled by way of Chhaparbandi settlement by virtue of Sada Hukumnama by Chhotka Mahadeo in favour of Smt. Saraswati Devi upon payment of Rs.1,644/- but the settlement is an unregistered document. The learned court was of the view that since the value of Hukumnama/ settlement was more than Rs.100/- the same has no legal sanctity being an unregistered document. The learned Court also recorded that the objector had claimed that they were in possession of the property for more than last 30 years and therefore, they have perfected their title by adverse possession, however, the court recorded that by virtue of Execution Case No.04 of 1999 the objector was evicted from the property and therefore the continuity of possession was destructed and consequently held that the plea of adverse possession was not acceptable. The learned Court also recorded that the objector had taken inconsistent plea , one by claiming title and second by claiming adverse possession. The learned Court thereafter recorded that the respondent had produced Khatiyani which was marked as Exhibit-A and the nature of the property has been recorded as Bakast Bhunhari Mundari. The learned trial Court also recorded that the objector had not filed any correction slip or rent receipt in connection with the property and had produced a rent receipt of the year 1973 marked as Exhibit-5 which was issued by the recorded tenant namely Chhotka Mahadeo on which the name of Saraswati Devi has been struck off and instead name of Sumitra Devi has been mentioned and held that the objector has not produced any rent receipt or correction slip in the name of Saraswati Devi and the objector failed to prove his case. The learned trial court recorded that the respondent had produced a copy of S.A.R. order passed in S.A.R. Case No.389/04-05 and also the order passed by the appellate authority and recorded that both the orders revealed that the matter was decided in favour

of the respondent and a revision was pending before the Commissioner, Ranchi who has the appropriate authority to deal with the point of limitation in the matter of the property involved in the case. The learned court held that the objector has not been able to prove right, title and interest over the property and dismissed the objection.

9. Before the appellate court, the point for consideration was whether settlee of the land/Saraswati Devi herself had any title over the land or not, which she was claiming on the basis of a Sada Hukumnama. The appellant had submitted that though unregistered Hukumnama is inadmissible but could be looked into to show the nature and character of the possession for which a judgment of Hon'ble Patna High Court in the case of "Mt. Ugni and Another Vs Chowa Mahto and Others reported in AIR 1968 Pat. 302" was referred and it was submitted that a Sada Hukumnama coupled with rent receipt or even an oral settlement coupled with rent receipt would confer good title.

10. The learned court also recorded the case of the respondent that S.A.R. Case No.389/04-05 passed under Scheduled area regulation showed that the respondent was khatiyani raiyat and the respondent had filed the case of restoration of the land against Bholanath Panda, husband of the appellant, under Chotanagpur Tenancy Act, 1908 which was allowed directing to restore possession in favour of the respondent by holding that the settlement of the year 1946 was in contravention of Section 48 of Chotanagpur Tenancy Act, 1908. The appeal against the said order was dismissed vide order dated 24.08.2018 in S.A.R. Appeal No.8R15 of 2010-11 holding that the objectors were in possession of the land belonging to the respondent by illegal and fraudulent means and the respondent was entitled to restore possession of the land. The learned appellate court took note of the position of law that previous sanction of the Deputy Commissioner is required for transfer of land and the alleged settlement was without prior permission of the Deputy Commissioner.

11. The learned appellate court dismissed the appeal by recording a finding in paragraph no.16 that the appellant failed to show the issuance of any rent receipt after the alleged Hukumnama and a single rent receipt was filed of the year 1973 much after execution of the sale deed (Exhibit-2) and the rent receipt was found to be manufactured one. The learned court held that the objector failed to establish that her vendor Saraswati Devi had valid right, title over the land in question and therefore, the objector also was not having valid title over the property. The finding of learned appellate court in paragraph 16 is quoted as under: -

16. In this case, no rent receipt filed on behalf of appellant to show that after the alleged Hukumnama, she came in possession over the land thereafter, and to have regularly paid rent and obtained rent receipts from the landlord. A Single rent receipt filed by the appellant (exhibit-7) alleged to have been issued in the year 1973 much after execution of sale deed (exhibit-2). This document is apparently manufactured on two counts. Firstly, it is not shown that name of

settlee is appearing in the shrista of the landlord, extract of register-II, maintained by the landlord has not been filed by the appellant. The alleged Hukumnama issued in the year 1946 and a single rent receipt of the year 1973 brought on record, no such receipt of the intervening period of 27 years filed on behalf of the appellant. This goes to show that rent receipt of the year 1973 is a manufactured document and land of the tribal is illegally transferred to appellant in the year 1964. Secondly, initially the rent receipt issued in the name of Saraswati Devi later on, after cutting name of Sumitra Devi written. It is also on record that after purchaser of the land the same was not mutated in favour of purchaser Sumitra Devi nor correction slip issued in her favour. From the above facts, it is clear that the above referred judgment is not applicable in this case. Since, the appellant failed to establish that her vendor Saraswati Devi had valid right and title over the land in question, therefore, subsequent purchaser i.e. appellant could not be said to have acquired any legal right, title or interest in such land. Where the settlee of the land herself did not have any title over the land, she could not have transferred any title to the appellant."

12. The learned trial court had also held that the objector had taken conflicting stand by claiming title and also adverse possession and such conflicting plea is not permissible. The learned trial court has rightly recorded that the respondent had produced a copy of S.A.R. order passed in S.A.R. Case No.389/04-05 and also the order passed by the appellate authority and recorded that both the orders revealed that the matter was decided in favour of the respondent and a revision was pending before the Commissioner, Ranchi who has the appropriate authority to deal with the point of limitation in the matter of the property involved in the case. The appellate court had recorded clear finding that the hukumnama was a sada hukumnama and the only rent receipt produced by the objector was a manufactured one by citing reasons. The objector could neither prove title of the vendor of the objector as the title was based on sada hukumnama nor could prove possession of the vendor of the objector since 1946. The objector had claimed to have purchased the property from the vendor Saraswati Devi by registered sale deed 09.06.1964.

13. This court finds that the judgements passed by the learned courts are well reasoned judgement and no question of law, much less any substantial question of law arises for consideration by this court.

14. Accordingly, this appeal is hereby dismissed.