
(2019) 01 JH CK 0102
In the Jharkhand High Court
Case No : Second Appeal No. 164 Of 2010

Sri Sri 108 Sri Mahabir Jee Mandir

APPELLANT

Vs

Zamil Ansari And Ors

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100

Citation : (2019) 01 JH CK 0102

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Ayush Aditya

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the appellant.
2. This appeal has been filed by the appellant under Section 100 of the Code of Civil Procedure being aggrieved by the Judgment and decree dated 09.07.2010 passed by the District Judge-Lohardaga in Title Appeal No.16 of 2009 whereby and whereunder, the learned first Appellate Court has dismissed the appeal and upheld the judgment and decree passed by the trial court.
3. The brief facts of the case is that the plaintiff is a deity and the suit has been filed through its Sewait. It is the case of the plaintiff that the suit property was recorded in the name of seven persons, one of them is the ancestor of the Sewait. Out of the seven recorded persons, five persons executed a registered deed of surrender in the year 1940 in favour of ex-landlord and in-spite of the deed of surrender, since it was not executed by all the recorded raiyats, the land was never treated to be surrendered. The ex-landlord never came in possession of the suit land and the land all along remained in the possession of the Sewait of the plaintiff through whom the suit has been filed and the deed was never acted upon. Before vesting of the Zamindari, the ex-landlord has created a trust of his Zamindari interest which was known as "Thakurain Chinta Mani Trust" in

the year 1948. At the time of vesting of Zamindari the land was not found or treated as Bakast and no K-form was filed by the then ex-landlord as Bakast and no M-form was prepared in the name of ex-landlord. It is further the case of the plaintiff that the name of Sewait through whom the plaintiff has filed the suit was entered in the Register-II and rent receipt was also issued in the name of Chimni Devi. It is the further case of the plaintiff that the Sewait through whom the suit has been filed by the plaintiff built the temple of Mahabirjee over a portion of the suit land dug a well for puja purposes and the entire land has been given to the temple of Mahabirjee and the father of the Sewait through whom the suit has been filed became the Sewait and after his death, the plaintiff is the Sewait and looking after the management of the temple. On 09.10.1997, the plaintiff wanted to make some construction during the Durga Puja but the defendants obstructed the same claiming that they have purchased the land from the Thakurain Chinta Mani Trust in the year 1965. It is claimed by the plaintiff that the ex-landlord who has allegedly executed a sale deed in favour of the defendants was not having any right, title and interest to execute any sale deed and the sale deed of the defendants is a forged, fabricated, null and void document and never acted upon. Hence, it is not binding upon the plaintiff.

4. The case of the defendants on the other hand is that the Sewait of the plaintiff through whom the plaintiff has filed the suit belongs to a family which has already surrendered the land in favour of ex-landlord by surrender deed dated 03.09.1940 and the ex-landlord came in possession of the same after surrender. It has been averred that after purchasing the land in the year 1965, a piece of land of half decimal was given for construction of a temple over a portion of the land and the villagers have constructed the temple thereon. The specific case of the defendant is that after execution of the surrender deed in the year 1940, Ganga Ram and his other co-sharer ceased to have any right, title and interest over the suit land and the defendants have rightly purchased the suit land from the rightful owners.

5. On the basis of the rival pleadings of the parties, the learned trial court altogether framed five issues. The learned first appellate court has renumbered the issues framed by the trial court by segregating issue no. ii framed by the trial court to two issues as issue no. ii and iii and hence the seriatim of the subsequent issues framed by trial court has been increased by one. Issue no. iv of the trial court which was after renumbering of the issues by the first appellate court has been mentioned as issue no. v in internal page no.4 of the impugned judgment but while being dealt with by the first appellate court in paragraph no.10 of the impugned judgment has been mentioned as issue no. iv is the main issue which is as follows:-

IV. Whether the plaintiff is entitled for decree of declaration of his right, title upon the suit land?

The learned trial court decided the issue against the plaintiff and dismissed the suit on contest with costs.

6. Being aggrieved by the said judgment of the trial court the plaintiff-appellant filed an appeal in the Court of District Judge, Lohardaga which was numbered as Title Appeal No.16 of 2009 which was disposed of by the learned first appellate court vide the impugned judgment. The learned first appellate court made an independent appreciation of evidence in record in respect of each of the issues and so far as the said issue no. iv is concerned, the learned first appellate court considered that there is absolutely nothing in the pleading as to when the endowment was made by the plaintiff and who made the endowment. It was also considered by the first appellate court that there is no document to show that the endowment was made in favour of the temple and in the absence of any pleading regarding the endowment of the entire suit land ever having made in the favour of the plaintiff and in the absence of any pleading as to on what date the endowment was made, the plaintiff has failed to establish the title over the suit land and dismissed the appeal and upheld the judgment of the trial court.

7. Mr. Ayush Aditya, the learned counsel for the appellant submits that the learned court below has failed to take note of the fact that the entry in the Register-II stands recorded in the name of Sewait through whom the suit has been filed but he fairly submits that no specific date of endowment or the manner in which the endowment was made has been pleaded by the plaintiff.

8. Having heard the submissions made at the Bar and after going through the materials in record, it is pertinent to mention here that the suit has not been filed in individual capacity by the Sewait of the deity.

As rightly considered by the learned trial court for establishing the title of the deity over the suit land, the endowment is a sine-qua-non and there is specific finding of fact by the first appellate court that there is neither pleading nor there is evidence to that effect. Under such circumstances, this Court is of the considered view that there is no substantial question of law involved in this appeal. Accordingly, this appeal being without any merit is dismissed but in the circumstances without any costs.

9. Let a copy of this Judgment be sent to the court below forthwith.