

(2021) 03 JH CK 0038
In the Jharkhand High Court
Case No : First Appeal No. 252 of 2017

State of Jharkhand

APPELLANT

Vs

Ramjee Prasad & Others

RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80
Code Of Criminal Procedure, 1973 — Section 144

Citation : (2021) 03 JH CK 0038

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Sachin Kumar, Sudhir Kumar Sharma

Judgement

It appears that the first appeal has been preferred by the State of Jharkhand through the Deputy Commissioner, Palamau against the judgment dated

31.05.2017 and decree signed on 08.06.2017 passed by learned Civil Judge (Senior Division)-I, Palamau at Daltonganj in Title Suit No. 108 of 2011

decreeing the suit in favour of the plaintiffs.

The plaintiffs have filed suit for declaration and confirmation of their right, title and possession over the suit land, described in Schedule-A of the Plaint

and also sought for alternative relief that if, they are found dispossessed during pendency of the suit, other than Schedule-B of land, they may be put in

possession through process of the court. Further relief sought for by the plaintiffs, for recovery of possession over the land, area 28 decimals,

described in Schedule- B of the plaint after removing illegal construction of the defendants through the process of the court.

The learned trial court has framed altogether seven issues, which are as follows:-

(I) Is the suit as framed maintainable in its present form? (II) Have the plaintiffs

valid cause of action for the suit? (III) Is the suit suffers from non-joinder of necessary parties? (IV) Are the plaintiffs have valid right title and possession over the suit land describe in Schedule 'A' of the plaint?

(V) Are the plaintiffs entitled to recovery of possession over the suit land described in Schedule 'A' of the Plaint?

(VI) Are the plaintiffs entitled for recovery of possession over the lands described in Schedule 'B' of the Plaint after removing the construction made by the defendants?

(VII) Are the plaintiffs entitled for reliefs as claimed?

Issue Nos. (IV), (V) & (VI) have been decided in para-13 of the Impugned Judgment on the basis of the plaintiffs' oral evidence adduced by three

witnesses i.e. P.W.-1 Manohar Prasad, P.W.-2 Devendra Kumar Lal and P.W.-3 Lavlesh Prasad, the plaintiff himself and documentary evidence

brought on record up to Exhibit- 13, which are as follows:-

Exhibit-1 with objection - Legal Notice dated 05.08.2011 under Section 80 C.P.C. sent to the State of Jharkhand through Deputy Commissioner,

Palamau, Deputy Commissioner, Palamau and Superintendent of Police, Palamau at Daltonganj on behalf of Manohar Prasad and Pankaj Kumar

Sinha by Sri Anjani Kumar Choubey, Advocate.

Exhibit-2 - is Registered Power of Attorney dated 11.02.2009 executed by all the four plaintiffs on 05.02.2009 in favour of Manohar Prasad and

Pankaj Kumar in respect of the land of area 3.1 acres pertaining to Khata number of plot no. 1/2719, 2/2497, 3/2226, 4/2226, 5/2226, 6/2226, 7/2226,

8/2226, 9/2226, 10/2226, 11/2226, 12/2226, 13/2495, 14/2495, 30/2498, 31/2225 and 32/22/33. Exhibit-3 - Petition dated 15.11.2010 through which S.P.

Palamau was requested to vacate the suit premises.

Exhibit-4 and 4/a - Receipt of Nishan Currier through which request letter have been sent to S.P. Palamau.

Exhibit-5, 5/a, 5/b Series - Acknowledgment Card through which notices under Section 80 C.P.C. have been received by the defendants. Exhibit-6 -

Registered sale deed no. 1702 executed in favour of Ram Naresh Lal in the year 1933 by the D.C., Palamau.

Exhibit-6/a - Registered sale deed of 1933 executed in favour of Sahadeo Tiwari by the then Deputy Commissioner for other than suit land, Exhibit-6/b

- Sale Certificate executed by Munsif, Palamau in favour of Chiteswar Dayal by which sale was confirmed by the Munsif, Palamau. Exhibit-6/c -

Certified Copy of sale certificate of the suit land. Exhibit-6/d - Registered bandobasti executed by Chiteswar Dayal in favour of Mahendra Prasad.

Exhibit-6/f - Registered Bandobasti deed no. 1396 dated 815/1950 executed by Lala Chitreshwar Dayal in favour of Raghunath Sahay. Exhibit-7 -

Certified Copy of order dated 19.08.1948 passed under Section 144 Cr.P.C.

Exhibit-8 - Certified Copy of deed in indenture for the transfer of the suit land.

Exhibit-9 - Certified Copy of Warrant of Delivery of possession in

favour of Chitreshwar Dayal of Execution Case No. 257/41.

Exhibit-10 - Certified Copy of Suit Register of Money Suit No. 489 of 1939.

Exhibit-11 Series - Postal Registry Receipts.

Exhibit-12 - Gazette Notification (Calcutta Gazette Para-I, 3 Dec., 1883) through which two out post namely Lesliganj and Panki were established

under Daltonganj Police Station.

Exhibit-13 with objection - Railway Map of Eastern Indian Railway Barkakana loop, D.T.O., Bawadih Section, Dnapur, Division.

The defendant no. 3 has also examined 13 witnesses:-

D.W.-1Â Â Â Â Â Â Â Â :- Ram Chandra Prasad.

D.W.-2Â Â Â Â Â Â Â Â :- Shiv Prasad Sahu.

D.W.-3Â Â Â Â Â Â Â Â :- Bigan Tiwari (Party witnesses Defendant no. 3),

D.W.-4Â Â Â Â Â Â Â Â :- Ganeshwar Tiwari,

D.W.-5Â Â Â Â Â Â Â Â :- Vijay Kumar Tiwari,

D.W.-6Â Â Â Â Â Â Â Â :- Rama Nand Tripathi,

D.W.-7Â Â Â Â Â Â Â Â :- Murari Tiwari,

D.W.-8Â Â Â Â Â Â Â Â :- Jai Shankar Tiwari,

D.W.-9Â Â Â Â Â Â Â Â :- Awadhesh Tiwari,

D.W.-10Â Â Â Â Â Â Â Â :- Suraj Deo Pd. Gupta,

D.W.-11Â Â Â Â Â Â Â Â :- Rajeshwar Tiwari,

D.W.-12Â Â Â Â Â Â Â Â :- Sonebhandra Tiwari,

D.w.-13Â Â Â Â Â Â Â Â :- Dinesh Dubey.

The defendants have produced and got exhibited following documents:-

Exhibit-A - Attested copy of Survey map of Vill-Redma. Exhibit-B (With Objection) - Attested copy of List of Police Station of Bihar as on 31.12.1975.

Exhibit-C (With Objection) - Attested copy of Estimate for electrification in Belwatikar Police Station dated 27.01.1976.

Exhibit-D - Certified Copy of Register D.

After considering the issues, the learned trial court gave finding which is recorded hereinafter:-

Admittedly, permissive possession never becomes Adverse to the plaintiff for any period and defendants have not stated in the written statement that on what date they started claiming hostile title from plaintiff. At this stage it is made clear that state is sovereign and if its official like police is extended this benefit, then there will be anarchy.

Such a situation have been dealt by our Supreme Court in a Civil Appellate Jurisdiction petition for Special leave of appeal (Civil No. 28034/2011 in a case of State of Hariyana Versus Mukesh Kumar and others) decided on Sept. 30 of 2011 by Hon'ble Justice Dalveer Bhandari and Hon'ble Justice

Deepak Verma in which in a similar situation State of Hariyana had filed Civil Suit through the S.P Gurgaon and Hon'ble Apex Court dismissed the

leave petition with cost of Rs. 50,000/- to be paid by the State of Hariyana for demonstrating its evil design of gravating the property of lawful owner in

a clandestine manner.

The learned counsel for the plaintiffs relied upon the decision of the Hon'ble Apex Court in Special Leave to Appeal (Civil) No. 28034/2011 arising out

of C.C 9038/10, State of Hariyana Versus Mukesh Kumar and others wherein the theory of Adverse possession has been discussed and analyzes

since the date of British Time as well as his Historical Back Ground. The Learned counsel for the Plaintiffs submitted that in the aforesaid case the

State of Hariyana had filed a Civil it through Superintendent of Police, Gurgaon seeking the relief of declaration with am effect that it has acquired the

right of ownership by way of Adverse possession Over the land situated in Revenue State of Hidayatpur Chawani, Hariyana and while disposing the

aforesaid case, the Hon'ble Apex Court has held that it is a very disturbing and damaging trend of the State taking the plea under doctrine of Adverse

possession which has troubled and created many legal minds and now the time

has come for change ""If the protectors of law became the Grabber of the property i.e land and property than people will left with no protection and there would be anarchy in the entire country"" and the Hon'ble Apex Court has held in their considered view that without further loss of time in the larger public interest, no Government Department, public undertaking and much less the Police Department should be permitted to title of land on pleading by invoking provision of Adverse possession and guard the property of its own citizen in the manner with has been shown in the aforesaid case and it was further held that there is an urgent need of fresh look of entire law on the adverse possession and the Hon'ble Apex Court recommended the Union of India to immediately consider and seriously deliberate either abolition of law of Adverse possession or to make suitable amendment in the law of Adverse possession. Moreover, it is admitted case of the plaintiffs that possession of defendants is permissive in nature and permissive possession can never be Adverse possession.

In view of this settled principal of law, plea of Adverse possession taken by defendant no.3 is totally absurd and it is not available to the defendant no.3.

So far the title and possession of plaintiffs are concerned, plaintiffs derived title through the registered sale deed executed by the then D.C, Palamau being Secretary for State of India in Council in the year 1933 (Ext.-6) to Ram Naresh Lal and thereafter this transferred land by D.C, Palamau to Ram Naresh Lal was further transferred to the father of the plaintiffs Chitreshwar Dayaal vide Ext.-6/b and 6/c dated 02.01.1941. Further, learned the then Munsif, Palamu delivered possession to the father of the plaintiff through Ext.-9 which is document of delivery of possession. From perusal of Ext.7 it is clear that the proceeding under Section 144 Cr.P.C was started on the Police report of S.I, Daltonganj over the suit land and had it been T.O.P over this land in the year, 1948 the Police Officer would not have reported for drawing proceeding over the suit land. From perusal of Ext.-13 and Ext.-6 and 6/a which is Map obtained through the Provision of R.T.I Act, 2005 (Ext.-13), it is apparent that the land had been transferred by the order of the British Queen and the then Deputy Commissioner had transferred 3.59 acres land (Ext.-6) and 23.96 acres through Ext.-6/a to Sahadeo Tiwari and 64 decimals land had been left for Road which is apparent from the

recital of the Map attached with Ext.-6 from which it is further apparent that out of 4.23 acres land 64 decimal land was excluded from sale for the purpose of District Board Road and only 3.59 acres land was sold through Ext. 6 out of 4.23 acres and if Ext.-6 and 6/a and Ext.-13 is read together, then it transpires that British Queen vide order dated 20-07- 1932 vide letter no. 9289 RI.L.C.T. Had allowed transferring 28.19 acres land which includes 3.59 acres land transferred to Ram Naresh Lal for consideration of Rs. 400 and 23.96 acres land for consideration of 360/- including 64 decimals land left for District Board for Road and total consideration of Rs. 760/-. This document Ext.-13 bears signature of the then Kanungo, Land Accusation, Deputy Collector and Deputy Commissioner, Palamau. For the other document Ext. 6 series are registered deed of Bandobasti through which Lala Chitreshwar Dayal in exercise of his right, title and possession had transferred 78 $\frac{1}{4}$ decimals land to Mahendra Prasad, Dashrath Narayan Lal and Raghunath Sahay vide Ext.-6/d and 6/f.

From perusal of the deposition of the plaintiffs witnesses PW1, PW2 & PW3, I further find that they have fully supported the case of the plaintiffs and defendants have not been able to discredit them on any relevant point and so far the defendants oral as well as documentary evidence is concerned, defendants have brought four documents which are Map Ext.-A, Booklet of List of Police Station. Ext.-B, Ext.-C is estimate of electrification and Ext.-D is Register-D of Village-Redma. None of the document is able to show that after transfer made by Deputy Commissioner and after sale certificate executed and registered by Munsif, Palamau and delivery of possession by the Court of Munsif, Palamau to Lala Chitreshwar Dayal has been changed and set aside at any stage till now. Defendants witness D.W. 11 at para 24 has already supported the case of the plaintiffs that T.O.P was established in the year, 1958-59 over an area of 3 decimal where buildings, well, Hazat, Kitchen, dais and toilets have been constructed and after elapse of time, T.O.P has made the fence over the remaining land claiming the same to be the ""Parti"" land. So far the identification of the suit land is concerned, it is clear that the same has been identified by plot number as well as boundary and defendants' witnesses D.W.3. Bigan Tiwari who appeared as party witness in Para-26 and 27 of his cross-examination, has

admitted that the land which was transferred by D.C, Palamau to Ram Naresh Lal in the year, 1933 is the suit land claimed by defendant no.3.

The learned G.P has filed two decisions, one reported in AIR 2002 SC 126 and another 1969 BLJR SC Chhathu Ram & others Vs. State of Bihar and

submitted that in the judgment reported in A.I.R 2002 S.C page 126 the Hon'ble Apex Court has held that facts which have no bearing with lis or the

dispute involved in the case do not give rise to a cause of action so as to confer the territorial jurisdiction of the Court concerned and for that fact

pleaded must have relevance to the dispute. While relying upon Second judgment reported in 1969 B.L.J.R the Hon'ble Apex Court has held by the

express terms of Section 4(a) of the B.L.J.R, 1950, that all the interest of the owners in all subsoil including every right in mines and minerals, whether

discovered or undiscovered or inclusive of such right of the lessee of the Mines and Minerals comprised in such estate or tenure become vested in the

State with effect from the date of vesting absolute and free from all encumbrance. Even the interest of lessee of the Mines and Minerals comprised in

the estate therefore seized and all encumbrance on the interest of onus estate were extinguished and state took the estate free from all the rights of

the lessee.

Keeping in view of the submission made on behalf of the learned G.P as well as the plaintiffs and from bare perusal of the Provision as contained in

Bihar Land Reform Act, 1950 it is clear that the said act was enacted to provide for the transference to the State on interest of the proprietors and the

tenure holders for the land of the Mortgagees and lessees of such interest including interest in trees, forest fisheries, Jalkar, Feries, Haat, Bazar, Mines

and Minerals and the validity of the such act constitutionally has been challenged in several cases. The Bihar land Reform Act, 1950 applies to the

Zamindari assets vested in the trustees for religious and Charitable purpose. The Act was constitutionally also followed even the same of the Provision

may trench incidentally on certain matters reserve for the Union of Parliament has held in the decision reported in 1953 B.L.J.R, page-1935 Maulvi

Abdul Hassan Versus State of Bihar and originally the Act i.e. Bihar Land Reforms Act, 1950 clearly related to the acquisition of the estate whereas

here in the present case in hand it is the case of the plaintiff that the then Deputy Commissioner Y.A Godbole also being Secretary of the State of

Indian Council has transferred the aforesaid land vide registered sale deed no. 1702 dated 20-03-1933 for consideration amount of Rs. 400/- for 3.59

acres of land and the said land so transferred was Revenue free land and as such even before enactment of B.L.R Act, 1950 as argued by the G.P,

Palamau, the C.N.T Act has never been applied upon the land so transferred by the Deputy Commissioner Y.A. Godbole.

Thus, in view of the oral and documentary evidence the plaintiffs and defendants discussed above and having heard the argument of both the parties, I

come to the conclusion that the plaintiffs have been able to prove his right, title and interest over the suit land and has also been able to prove that they

are entitled to have possession over Schedule-A land including Schedule-B land through the process of law. Learned A.A.G.-II on behalf of appellants

has submitted that the appeal has been admitted on 15.02.2019 by Coordinate Bench of this Court, L.C.R. has been called for. Supplementary

affidavit to I.A. No. 2091/2020 has been filed on 01.03.2021 by the appellants showing that over the suit land, a police station is standing.

Learned A.A.G.-II on behalf of appellants has referred part of the judgment recorded at page-8 of the trial court judgment and has submitted that the

case of the plaintiffs is that, in the year 1958-59, the then S.P., Palamau Sri A.R. Ansari requested Chitreshwar Dayal to provide temporarily and

provisionally, two decimals of land to shift T.O.P. Belwatikar at village - Rerma and Chitreswar Dayal orally permitted the S.P. Palamau to occupy

two decimals of land for shifting T.O.P. Belwatikar, Rerma and the S.P. Palamau agreed to vacate the lands on demand of the Chitreshwar Dayal or

his descendant without any fail. Chitreshwar Dayal requested so many time to the S.P., Palamau, in his life time to vacate the land, but he assured to

vacate the same. After death of father of the plaintiffs, the plaintiffs requested to the police department to vacate the lands, but the police department

refused to vacate it. In the meantime, without any permission of the plaintiffs, the police has made further construction over the suit land and occupied

28 decimals of land of T.O.P. illegally and without permission of the plaintiffs which has been described in Schedule-B of the plaint.

Learned A.A.G.-II on behalf of the appellants has submitted that for the purpose of State, there is a police station, standing over the land, as such

nothing will happen, if the stay is continued till disposal of the first appeal.

Learned counsel for the respondents, Mr. Sudhir Sharma has placed the finding recorded by the learned trial court and has submitted that it is surprisingly for the plaintiffs / respondents, that a suit land which was purchased through the registered sale deed executed by the then D.C, Palamau being Secretary for State of India in Council in the year 1933 (Ext.-6) to Ram Naresh Lal and thereafter this transferred land by D.C, Palamau to Ram Naresh Lal was further transferred to the father of the plaintiffs Chitreshwar Dayal, vide Ext.-6/b and 6/c dated 02.01.1941. Further, learned the then Munsif, Palamu delivered possession to the father of the plaintiff through Ext.-9, which is document of delivery of possession. From perusal of Ext.7 it is clear that the proceeding under Section 144 Cr.P.C was started on the Police report of S.I, Daltonganj over the suit land, and had it been T.O.P over this land in the year, 1948, the Police Officer would not have reported for drawing proceeding over the suit land. From perusal of Ext.-13 and Ext.-6 and 6/a which is Map obtained through the Provision of R.T.I Act, 2005 (Ext.-13), it is apparent that the land had been transferred by the order of the British Queen and the then Deputy Commissioner had transferred 3.59 acres land (Ext.-6) and 23.96 acres through Ext.- 6/a to Sahadeo Tiwari and 64 decimals land had been left for Road which is apparent from the recital of the Map attached with Ext.-6 from which it is further apparent that out of 4.23 acres land 64 decimal land was excluded from sale for the purpose of District Board Road and only 3.59 acres land was sold through Ext. 6 out of 4.23 acres and if Ext.-6 and 6/a and Ext.-13 are read together, then it transpires that British Queen vide order dated 20-07-1932 vide letter no. 9289 RI.L.C.T. had allowed transferring 28.19 acres land which includes 3.59 acres land transferred to Ram Naresh Lal for consideration of Rs. 400 and 23.96 acres land for consideration of 360/- including 64 decimals land left for District Board for Road and total consideration of Rs. 760/-. This document Ext.-13 bears signature of the then Kanungo, Land Accusation, Deputy Collector and Deputy Commissioner, Palamau. For the other document Ext. 6 series are registered deed of Bandobasti through which Lala Chitreshwar Dayal in exercise of his right, title and possession had transferred 78¼ decimals land to Mahendra Prasad, Dashrath Narayan Lal and Raghunath Sahay vide Ext.-6/d and 6/f.

Learned counsel for the respondents has submitted that it is only in the State of Jharkhand, that a land which has been executed by the then Deputy

Commissioner, Palamau is being retained by the State on the ground that there is a police station.

Learned counsel for the respondents has submitted that as per finding recorded by the trial court, admittedly there is a police station, but without any

authority of law, the police station is running over the suit land and no plea for adverse possession have been taken by defendants / appellants.

This Court after hearing both the sides is of the opinion, that if the land is required for the purpose of running a police station then why the State has

not acquired the said land till date and unnecessarily litigation is being continued by the State even when one of the State machinery has executed deed

i.e. the then Deputy Commissioner, Palamau in accordance with law.

Under the aforesaid circumstances, put up this case when the physical court starts, but the Chief Secretary, Government of Jharkhand, Secretary,

Land Reforms Department, Government of Jharkhand, Home Secretary, Government of Jharkhand and Director General of Police, Government of

Jharkhand are advised by this Court to look into such litigation and take legal remedy, as faith of people upon State Machinery is under challenge.

Till physical court starts or till the next date of hearing, status quo shall be maintained, but it is expected from the State machinery to look into such

matters and take legal recourse available under the law.

Let a copy of order be communicated to the Chief Secretary, Government of Jharkhand at once.