

(2011) 09 JH CK 0033
In the Jharkhand High Court
Case No : S.A. No. 82 of 2008

Sudan Munda

APPELLANT

Vs

Fagua Munda and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Evidence Act, 1872 — Section 50

Penal Code, 1860 (IPC) — Section 494, 495, 497, 498

Citation : (2012) 2 JCR 330 : (2012) 2 JLJR 304

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari

1. This second appeal is against the judgment and decree passed in Title Appeal No. 13 of 2006 by learned 20th Additional Judicial Commissioner, Ranchi, whereby he has dismissed the appellant's appeal and upheld the judgment and decree passed in Partition Suit No. 25 of 1999 by learned Sub Judge-I, Khunti. The appellant was the plaintiff No. 1. He along with his brother Sohan Munda (proforma respondent) filed said partition suit against the defendants in the court of learned Subordinate Judge, Khunti, claiming share in the suit property, described in the schedule appended to the plaint.

2. The plaintiff's case was that the suit property, appertaining to Khata No. 6 of village Bagru, P.S. Khunti, District Ranchi was recorded in the name of Karam Singh Munda and Sukhram Munda, both sons of Ratan Munda, having one share and Turi Munda-brother of Sukhram Munda, having equal share. However, it was specifically mentioned that Turi Munda went to Assam. The plaintiff claimed to be the descendant of Turi Munda. Further case of the plaintiff was that alias name of Turi Munda was Suri Munda and the said alias name was recorded in Khata No. 65 of village Bagru. The said land of village Bagru was also an Item of the suit property. Further case of the plaintiff was that though he had got half share in

the property, the entire land is being cultivated by the defendants. Hence the necessity of the suit.

3. The defendants appeared and contested the suit. It was stated, *Inter alia*, that the plaintiffs are stranger to the family. There is no unity of title and possession between the plaintiffs and the defendants. The plaintiffs have no cause of action for the suit. It has been further stated that the plaintiffs are not even the residents of village where the suit lands are situated. They are residents of village Totada, P.S. Khunti, District Ranchi and they have absolutely no concern with the village Bagru. The plaintiff invented a story and have given alias name of Turi Munda as Suri Munda in order to show their connection with the family of the defendants. Turi Munda had left for Assam long ago and was unheard of. He never returned to the native village. He has no alias name as Suri Munda. The plaintiff's suit is, thus, frivolous and is liable to be dismissed.

4. On the basis of the said pleadings of the parties, learned Trial Court framed several Issues.

5. After thorough discussion and appraisal of the facts and evidences on record, learned Trial Court decided almost all the issues against the plaintiffs, holding that the plaintiffs have miserably failed to prove their case, as pleaded in the plaint, There was no unity of title and possession between the parties. There was a defect of non-joinder of parties and the plaintiffs have no valid cause of action for the suit. Learned Trial Court, thus, held that the plaintiffs are not entitled to any relief, as prayed for, and dismissed the suit.

6. The plaintiffs preferred appeal against the said judgment and decree of the learned Trial Court in the Court of learned Judicial Commissioner, Ranchi, being Title Appeal No. 13 of 2006. The said appeal was finally heard and disposed of by learned 20th Additional Judicial Commissioner, Ranchi.

7. Learned Lower Appellate Court having heard the parties, discussed the evidences and considered the grounds taken by the appellant. After scrutinizing the evidence, learned Lower Appellate Court recorded its own independent findings and held that the plaintiffs have failed to prove unity of title and possession between the parties with respect to the suit land. The suit is also bad for non-joinder of necessary party and the plaintiffs have no cause of action and the partition suit filed by them is not maintainable. Learned Lower Appellate Court, thus, concurred with the findings of fact arrived at by the learned Trial Court and dismissed the appeal.

8. In this appeal, the appellant has challenged the findings of the learned Lower Appellate Court on the sole ground that the finding is arrived at on lopsided consideration of the evidence. The learned Lower Appellate Court has not properly appreciated Exts.1 & 2, brought on record by the plaintiffs. Though the Lower Appellate Court has mentioned the said exhibits in its judgment, but it has recorded finding without taking into due consideration of the said documentary evidences.

9. I have heard Learned Counsel for the appellant and perused the judgments of the learned courts below. On perusal of Paragraphs-6 to 13 of the judgment of the learned Lower Appellate Court, I find that all oral and documentary evidences, including Exts.1 & 2 have been duly discussed and considered by the learned Lower Appellate Court,

10. Having discussed the evidences in detail, learned Lower Appellate Court has held that the plaintiffs have failed to examine any witness having special means of knowledge of relationship of Turi Munda or Suri Munda. He further held that the plaintiffs have also themselves admitted that they are not in cultivating possession of the disputed land and that the plaintiffs failed to prove unity of title and possession with the defendants with respect to the suit land.

11. Section 50 of the Indian Evidence Act lays down the requirement of proving the relationship. It reads as under:

50. Opinion on relationship, when relevant- When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869), or in prosecutions u/s 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

12. It is clear from the said provision of law that the Court can form an opinion as to the relationship of one person to another, as expressed by conduct, as to the existence of such relationship of any person who has special means of knowledge on the subject. Learned Lower Appellate Court held that the appellant has failed to examine any witness or any member of the family having special means of knowledge on the subject and there is no admissible evidence in support of the plaintiffs' claim of their relationship with the defendants.

13. Learned Lower Appellate Court, after considering the evidences elaborately, including Exts.1 & 2, has arrived at his conclusion and concurred with the findings of fact recorded by the learned Trial Court. The findings of fact recorded by the learned courts below are based on proper appreciation of evidence on record and the same are binding on the second appellate court.

14. I find no error in the impugned judgment and decree of the learned lower appellate court below, giving rise to any substantial question of law. This appeal is, accordingly, dismissed.