

(1972) 09 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jursdn. Case No. 868 of 1971

Sudhir Mandal and Others

APPELLANT

Vs

The Subdivisional Officer and Another

RESPONDENT

Date of Decision : 20-09-1972

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : AIR 1973 Patna 266

Hon'ble Judges : U.N. Sinha, C.J; K.B.N. Singh, J

Bench : Division Bench

Advocate : S.R. Ghoshal, for the Appellant; Birendra Prasad Sinha, Govt. Pleader No. II and Abhoy Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners have filed this application under Articles 226 and 227 of the Constitution of India, praying that an order passed by the Subdivisional Officer, Jamtara, dated the 17th May, 1971, incorporated in Annexure 1, may be quashed. By this order the petitioners have been evicted from a large number of plots appertaining to A. K. J. No. 70 of Mouza Tarni, Police Station Narainpur.

2. It appears that opposite party No. 2 of this writ case had applied for eviction of the writ petitioners on the ground that they had illegally occupied the disputed lands belonging to this opposite party. It appears that the case of the writ petitioners was that their family had obtained the disputed lands by Korfa settlement in 1355 B. S. and they were in possession since then. According to them, further, a title suit had been instituted in the Court of the Subordinate Judge, Jamtara by opposite party No. 2 against petitioner No. 1 and the suit had been compromised by which this opposite party had given up his right, title and interest over the disputed lands and a compromise decree had followed.

3. On a consideration of the materials on record, the Subdivisional Officer of Jamtara has come to the conclusion that the writ petitioners failed to establish

their claim of adverse possession and that they were in possession of the disputed lands is contravention of Section 20 (1) of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949. Hence an order of eviction followed.

4. Learned counsel for the petitioners has argued that his clients were in possession of the disputed lands since 1948, having obtained title by adverse possession. Reliance is also placed on the compromise decree. But, in a summary proceeding of this nature the Subdivisional Officer has not accepted the facts on which the writ petitioners had relied before him and we do not think that the petitioners are entitled to an order quashing Annexure 1. It may be mentioned that the period of adverse possession against members of the Scheduled Tribes is thirty years, after amendment of Article 65 of the Limitation Act, and, therefore, no question of adverse possession by the writ petitioner could arise.

5. The writ application, therefore, fails and it is dismissed; but, without costs. The order of stay passed on the 2nd July, 1971 is vacated.