
(2000) 02 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 42 of 1980 (R)

Sura Kudada and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 83

Citation : (2000) 3 BLJR 1858

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Deb, J.—This writ petition after admission had been stayed till the disposal of C.W.J.C. No. 198 of 1979 (R) wherein constitutional validity of the Wilkinson's Rules (hereinafter referred to as "the Rules") have been challenged. Recently, the Full Bench had disposed of the reference made with regard to the constitutional validity of the rules. In the above-mentioned writ petition, Hon'ble three Single Judge had written three judgments in the said Full Bench and the conscientious of the decision arrived at is that the Wilkinson's Rules shall continue to be followed in the administration of Civil Justice of Kolhan area till suitable Rules/Regulations in place of those Rules have been framed by the Government. Till date no such enactment or suitable Rules/Regulations have been framed by the State Government and hence, the Wilkinson's Rules in the Kolhan area in the administration of Civil justice is still in vogue.

2. In the present writ petition, the judgment and order passed by respondent No. 2 i.e. the Commissioner, South Chotanagpur Division, Ranchi, in Kolhan Title Appeal No. 90 of 1977 and the judgment and order dated 30.3.1977 passed by respondent No. 3 i.e. the Additional Deputy Commissioner, Singhbhum at Chaibasa in K.T. Suit No. 56 of 1970, copies of which are annexed as Annexures 5 and 4 respectively have been challenged.

3. The case in brief is that the respondent Nos. 4 to 6 filed K.T. Suit No. 56 of 1970 before the respondent No. 3 for declaration of title, confirmation of possession and in the alternative if found dispossessed for delivery of Khas possession and also for correction of Khatian parcha. The case of the plaintiffs in that suit was that originally the suit property, details of which are described in the Schedule of the plaint, belonged to one Sura Ho, the common ancestor of both the parties. The genealogy had been given in Schedule A of the plaint. When Sura Ho died issueless, the predecessors of the plaintiffs and the defendants became entitled to half and half share of the property belonging to Sura Ho as agnates of the original ancestor Sura Ho. According to the plaintiffs, the suit lands were recorded in the names of Chota Dogor Ho and Kaira Ho, during the course of Tucky Settlement, but then the litigation started between the parties i.e. amongst the predecessor of the plaintiffs and the defendants and such dispute once even went to the Commissioner who referred the matter to the Kolhan Superintendent for final adjudication. Such dispute was decided by the Kolhan Superintendent finally between the father of the plaintiffs and the defendant No. 1 in Case No. 893 of 1914-15 and such order was also implemented through demarcation in case No. 10 of 1920-21. According to the plaintiffs, after that the father of the plaintiff Bara Do Ho along with his brother Marki Ho came in possession of the suit land and they remained in such till their death and then the plaintiffs came in possession and remained so till the date of filing of the suit.

The Jamabandi in the Revenue Department was corrected vide Case No. 1139 of 1920-21 under the orders of Mr. W.G. Kelly, the then Kolhan Superintendent but the Munda Jamabandi was not corrected as per the decision arrived at by the Kolhan Superintendent in Case No. 893 of 1914-15. Then several cases erupted between the parties on criminal side and till 1955 such cases went on going between the parties bringing allegations against each other. In some cases, plaintiffs were accused, in some cases, they were complainants and similarly some of the defendants were accused in some cases and in some cases they were informants. All those cases were disposed of/ended in acquittal of either of the parties and some cases were compromised. When the plaintiffs could feel that until and unless the Munda Jamabandi is corrected such dispute would go on then they approached the Kolhan Superintendent in Anchal Case No. 23 of 1958-59 for correction of Munda Jamabandi in terms of the orders passed in case No. 893 of 1914-15 and also in Mutation Case No. 1139 of 1920-21 but the Kolhan Superintendent rejected the petition, then the plaintiffs filed appeal before the L.R.D.C., Chaibasa. The appeal was registered as Misc. Appeal No. 11 of 1959. The L.R.D.C. after hearing the parties held that the order of partition of Kolhan Superintendent in Case No. 893 of 1914-15 and Mutation Case No. 1139 of 1920-21 would prevail and the Munda Jamabandi should be corrected accordingly. Against this order of L.R.D.C., the opposite party preferred a revision case before the Additional Deputy Commissioner, Singhbhum which was registered as Revision Case No. 14 of 1960-61. As the Settlement operation was

going on at that period, the Additional Deputy Commissioner did not like to give any finding in the revenue case and dropped the same. According to the plaintiffs, by such dropping, practically the order passed by the L.R.D.C. in Misc. Appeal No. 11 of 1959 remained valid, unaltered or modified.

3-A. The grievance of the plaintiffs was that during the operation of settlement, the authorities again committed mistake without considering the previous orders passed by the Kolhan Superintendent, as mentioned above, recorded the names as it was in Tucky settlement which was directly in contravention of the orders passed earlier. The plaintiffs preferred an objection u/s 83 of the Chotanagpur Tenancy Act, 1908 but their prayer was rejected on technical ground. Then, finding no other alternative, the plaintiffs had to file a suit as mentioned above because such wrong entry in the record of rights in the recent suivey created confusion and cloud over the title of the plaintiffs, hence, with the relief claimed, as already mentioned above, Kolhan Title Suit No. 56 of 1970 was filed.

4. The petitioners of this writ petition and the husband of respondent No. 7 and the father of respondent No. 8 contested the suit by filing joint written statement. In that suit, they have denied that the plaintiffs and the defendants had inherited from the common ancestor Sura Ho. Their main contention was that the suit lands belonged to defendant No. 1 of the suit and his brother Kaira Ho and, as such, their names were recorded correctly in Tucky settlement. Their further case was that the orders passed by the then Kolhan Superintendent, Mr. B.B. Saran in Case No. 893 of 1914-15 was ultra vires and the same was never taken effect of the partition suit and when the revisional survey was completed in the year 1918 and no notice had been taken about the Orders passed in case No. 893 of 1914-15, the same have no effect upon the final publication of the record of rights and by such order of Mr. B.B. Saran, the rights of the plaintiffs' predecessor had never been established nor it had extinguished the right of the defendants' predecessor over the suit land.

5. On consideration of the contest being made, the respondent No. 3 referred the suit to three Panchas for arbitration as contemplated under Rule 20 of the said Rules. Two of the Panchas submitted a joint report in favour of respondents Nos. 4 to 6 and recommended that the land in dispute should be recorded in the names of the plaintiffs-respondent Nos. 4 to 6. One of the Panchas gave opinion and recommendation in favour of the petitioners. When the award of the Panchas was filed before the respondent No. 3 then the petitioners filed objection to the majority decision in the award taking various grounds to the effect that such majority award was against the common law of the country and against the rules enacted by the Governor-General in Council. Then, the respondent No. 3 after considering the evidence of the parties, both oral and documentary, accepted the majority award and decreed the suit. Against that the petitioners preferred appeal being K.T.A. No. 90 of 1977 before the respondent No. 2 but the same and also been dismissed after writing a lengthy judgment.

6. The petitioners' contention before this Court in the Writ Petition is (i) that the

orders passed by respondents Nos. 2 and 3 are illegal, void and without jurisdiction, (ii) That the respondent Nos. 2 and 3 had illegally taken cognizance of the suit when the same had been filed after the period of limitation as contained in Rule 3 of the said Rules and (iii) that the suit was filed for correction of the entry in the record of rights which the respondent No. 3 had got no jurisdiction to entertain.

7. A counter-affidavit has been filed for and on behalf of the private respondents supporting the impugned orders and judgments and also refuting the points of law raised in the writ petition. In the counter-affidavit, it has been stated that the earlier order passed in Case No. 893 of 1914-15 had reached its finality long back and the same had also been implemented by Demarcation Case No. 10 of 1920-21 and the Mutation Case No. 1139 of 1920-21 but taking advantage of the wrong entry in the Munda Jamabandi, the defence had thrown cloud over the title and possession of the respondents-plaintiffs and hence, the suit was filed which was rightly entertained being not barred under Rule 3 of the Wilkinson's Rules and decision had been given by accepting the majority award.

8. During the course of hearing of this writ petition, Mr. Khatri, appearing for and on behalf of the petitioners has contended that the suit was filed for correction of the record of rights which was not within the jurisdiction of respondents No. 2 and 3 and hence, entertainment of the suit and the appeal was without jurisdiction. On perusal of the records, it could be found that the suit was never filed for correction of the Jamabandi alone rather such prayer has been made only as a consequential relief, to the paramount relief claimed with respect to the title and possession. Practically, when the title and possession is declared then it becomes the bounden duty of the Revenue authorities to correct the record of rights. No specific prayer to that effect was necessary and even that has been made in the suit, it cannot be said that such prayer had taken away the jurisdiction of the Courts as contemplated under the Wilkinson's Rules.

9. Mrs. Jaya Roy, appearing for and on behalf of the respondents has rightly submitted that for non-consideration of the decision of the earlier case fought between the predecessor of the parties long back in the year 1914-15 while entries were being made in the revenue records had caused cloud on the title and possession of the plaintiffs and with that cause of action, the present suit has been filed and the possession of the plaintiffs' predecessor had already been decided in the earlier suit and no where it could be shown that the plaintiffs had ever been, dispossessed of the suit property. In that way, the suit had rightly been decreed by both the Courts below under the Wilkinson's Rules.

10. On consideration of the reliefs claimed, I do not find that the cognizance taken of the suit by the respondents Nos. 2 and 3 was without jurisdiction when the title has been clouded between the parties on wrong entry in the record of rights. Moreover, the party has got every right to go for a suit for declaration of title and confirmation of possession. Thus, on this score, there is no force in the writ petition.

11. The second point urged by Mr. Khatri is that the suit was hopelessly barred by limitation as Munda Jamabandi prepared in the year 1918 and also in 1963 cannot be challenged in the year 1970 when the same is totally barred by limitation as contemplated under Rule 3 of the Rules. Suit had been filed for declaration of right, title and interest over the suit land and the cause of action for the suit was due to trouble being created by the defendants as there was wrong entry in the record of rights. It appears that the record of rights were definitely wrongly prepared giving go-by to the decision arrived at earlier by the Kolhan Superintendent already mentioned above and the title and possession of the plaintiffs had already been established long back in the year 1914-15, but the revenue records were not corrected accordingly and this gave a handle to the defendants to create trouble about the possession and title of the plaintiffs and then, the plaintiffs have no other alternative but to come in the suit, I do not find that in the circumstances of the case, Rule 3 of the Wilkinson's Rule would create a bar in coming up for declaration of the title over the suit land. Moreover, it is an established principle of law that majority of the award should be accepted unless it can be shown that the same suffers from the procedural defect as contemplated under Rule 20 of the Wilkinson's Rules or that the same is devoid of consideration of the customs prevailing amongst tribals. There was no plea of misconduct against the majority members who gave their award in favour of the plaintiffs. This aspect has been considered when objection was raised against the award by both the Courts below and came to the concurrent findings. There is no scope of this Court to interfere with such concurrent findings unless the same suffers from jurisdictional error or error apparent on the face of it. It appears from the perusal of both the judgments as contained in Annexures 4 and 5 that both the respondents Nos. 3 and 2 had taken much pain and gone in depth into the cases of the parties and the decision arrived at by the majority award and then accepted the award rejecting the objections raised from the side of the petitioners. Thus, the points raised in this writ petition have got no force.

12. In the result, this writ petition is dismissed, but in the facts and circumstances of the Case, no order as to costs.