

(2012) 10 JH CK 0069
In the Jharkhand High Court
Case No : L.P.A. No. 222 of 2012

Zila Parishad, Dhanbad

APPELLANT

Vs

Koylanchal Sahkari Grih Nirman Samiti Ltd. and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Bihar Provincialisation Of Roads And Hospitals Act, 1947 — Section 3(1)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 15, 9

Citation : (2012) 10 JH CK 0069

Hon'ble Judges : Jaya Roy, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Mahesh Tewari, Niranjana Singh, Om Prakash Singh and Sabyasanchi, for the Appellant; Jay Prakash For the Respondent No. 1, M/s. Md. Shamim Akhter, SC (Mines) and Arvind Kumar Mehta, JC to SC (Mines) For State of Jharkhand and M/s. Bhawesh Kumar and Ravi Kumar, Advocates For M.A.D.A., for the Respondent

Judgement

D.N. Patel, J.—The present Letters Patent Appeal has been preferred by the appellant (original respondent no. 4) against an order, passed by learned Single Judge in W.P. (C) No. 2033 of 2007 dated 20th April, 2012, whereby, the learned Single Judge has allowed the writ petition, preferred by the original petitioner, who is respondent no. 1 in the instant appeal. Learned counsel for the appellant has submitted that the order, passed by the learned Single Judge in W.P. (C) No. 2033 of 2007, is de hors the facts and law and hence, deserves to be quashed and set aside.

2. It is further submitted by the learned counsel for the appellant that, in fact, the land, in question, which is described as Khata No. 165, Plot No. 266, Mauza-Dhanbad, especially part thereof, which is known as DB-I, belongs to the present appellant i.e. Zila Parishad, Dhanbad, since 1934 onwards and much prior to that time also and never the name of respondent no. 1 is being reflected in the revenue records, at all. Similarly, the name of respondent no. 1, who is claiming ownership over the property, in question, is also not reflected in Register-II,

which is also popularly known as "Tenant's Ledger" and in colloquial language, it is also known as "Jamabandi Register", in which normally the name of successor-in-title is introduced by way of mutation. In this Register also, neither the name of respondent no. 1 (original petitioner) nor the name of its predecessor-in-title has been reflected whereas, as stated herein above, in both the documents, which are vital documents so far as the land disputes are concerned, the name of Zila Parishad, Dhanbad, is reflected as the land belongs to Zila Parishad, Dhanbad. It is further submitted by the learned counsel for the appellant that respondent no. 1 (original petitioner) has no right, title and interest whatsoever over the property, in question, and they are encroachers upon the properties, in question, and therefore, initially on 31st August, 2005 notices were issued to all the three persons, who are encroachers in the aforesaid D3-I area of Plot No. 266. Out of the aforesaid three encroachers, two preferred writ petitions before this Court being W.P. (C) No. 5254 of 2005 and W.P. (C) No. 5918 of 2005 whereas the present respondent no. 1 (original petitioner) chosen to prefer an appeal against the notice of removal of encroachment before the Commissioner, North Chhotanagpur Division, Hazaribagh, bearing Appeal No. 99 of 2005. It is further submitted by the learned counsel for the appellant that neither the writ petitions were entertained by this Court nor the appeal was entertained by the Commissioner, North Chhotanagpur Division, Hazaribagh. The appeal preferred by respondent no. 1 (original petitioner) was dismissed on 5th April, 2011. Against the order dated 29th March, 2006, passed in W.P. (C) No. 5244 of 2005 and W.P. (C) No. 5918 of 2005, the other two encroachers ventured to prefer L.P.A. No. 185 of 2006, which was also dismissed vide order dated 14th September, 2006 and those two writ petitioners, who were appellants in L.P.A. No. 185 of 2006, were directed to file suit and, in fact, they have instituted Title Suit No. 72 of 2006 and Title Suit No. 278 of 2007. Both the suits are pending before the learned Civil Judge, Senior Division-VH, Dhanbad. Thereafter, respondent no. 1 (original petitioner) preferred an interlocutory application for joining him as a co-plaintiff in Title Suit No. 278 of 2007 under the relevant provisions of the Code of Civil Procedure, which has also been dismissed vide order dated 10th August, 2011 and no appeal has been preferred by respondent no. 1 (original petitioner) against the order dated 10th August, 2011, as per the knowledge of the appellant.

3. It is also submitted by the learned counsel for the appellant that the highest claim of the original petitioner is based upon the fact that the original petitioner has got registered sale deed in its favour, which is dated 18th September, 1997 (Annexure K). It is submitted by the learned counsel for the appellant that the predecessor-in-title of present respondent no. 1 (original petitioner) has, in favour, no title at all over the property, in question, and, therefore, he cannot pass a better title to the original petitioner. It is submitted by the learned counsel for the appellant that the original petitioner is relying upon some documents of the year, 1934 and thereafter of the year, 1981 and thereafter of the year, 1997. One of the sale deeds is of the year, 1934, which is also known as a deed of Permanent

Settlement. Another document is a document of disclaimer of the year, 1981 and the third document is a Benamidar document of the year, 1997. It is vehemently submitted by the learned counsel for the appellant that all these documents are not helpful to the original petitioner, because these documents can only be properly adjudicated by the trial court in a suit where cogent and convincing evidences can be led by the parties to the suit. Otherwise, in every case, on the date the encroachment removal notice is given by the Zila Parishad, everybody will be claiming title upon the property, in question, in a writ petition, instead of filing a suit. It has been further stated by the learned counsel for the appellant that respondent no. 1 (original petitioner) should have filed a suit along with stay petition under Order XXXIX Rule 1 & 2 of the CPC and if such a petition is filed, the present appellant will cooperate in earliest disposal of the said petition.

4. Much has been argued by the learned counsel for respondent no. 1 (original petitioner) about the Benamidar's property, disclaimer documents etc., in detail. Learned counsel for the appellant pointed out that neither of the documents of the year, 1981, 1984 or 1997 is helpful to respondent no. 1 (original petitioner) for claiming ownership upon the property, in question. It is further submitted by the learned counsel for the appellant that this aspect of the matter has not been properly appreciated by the learned Single Judge and unnecessarily, in fine nicety, the provisions of Section 3(1) of the Bihar Provincialisation of Roads and Hospitals Act, 1947 has been discussed in the whole judgment. In fact, that has nothing to do with the facts of the present case. It has also been submitted by the learned counsel for the appellant that respondent no. 1 (original petitioner) has tired unnecessarily to confuse the court that a road, which has been carved out later on from the aforesaid property, is belonging to the Government and the Zila Parishad is also agreeing with the fact that always the road belongs to the Government, but, that does not mean that entire land of Plot No. 266 is also belonging to the Government. It has also been submitted by the learned counsel for the appellant that respondent no. 1 (original petitioner) has smartly given an application to the Circle Officer, asking him as to whether it should go for mutation and has obtained a letter from the Circle Officer that for mutation the original petitioner should go to the Public Works Department of the Government.

5. Be that as it may, the fact remains that neither the original petition's name nor the name of any of its predecessor-in-title has been entered in the records of rights nor into the document, which is known as Register II and is also known as Tenant's Ledge/Jamabandi Register and it is submitted that this aspect of the matter has also not been properly appreciated by the learned Single Judge and hence the order, passed by the learned Single Judge dated 20th April, 2012 in W.P. (C) No. 2033 of 2011 deserves to be quashed and set aside.

6. Learned counsel for the appellant has also submitted that in other similar matters, the encroachers have approached this Court by way of preferring writ petitions being W.P. (C) Nos. 2687 of 2011, 2688 of 2011 and 1932 of 2011 and all the writ petitions were dismissed by the very same learned Single Judge vide

order dated 11th July, 2011 whereas in the present case, the writ petition has been allowed. Learned counsel for the appellant is also relying upon the judgment, delivered in L.P.A. No. 269 of 2011 along with L.P.A. No. 270 of 2011 and has stated that if respondent no. 1 (original petitioner) is filing a suit, the same may be decided on its own merits, without being influenced by any observations, made in the writ petition, as has been stated in these Letters Patent Appeals" order and it is submitted that let the order, passed by the learned Single Judge be quashed and set aside and the writ petition, filed by respondent no. 1 (original petitioner) be dismissed by allowing this Letters Patent Appeal.

7. Learned counsel for the appellant further submitted that as per Section 4 of the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 whenever any transfer is made by way of sale, exchange, mortgage etc., the registering authority shall give a notice to the Anchal Adhikari (Circle Officer), but, in the facts of the present case, no such notice has been given to the Circle Officer, otherwise it could have been pointed out at the relevant that the so called sale deed is devoid of any merits, because the owner is somebody else.

8. We have heard learned counsel appearing for respondent no. 1 (original petitioner), who has vehemently submitted that respondent no. 1 (original petitioner) had preferred the writ petition, mainly challenging the order, passed by the Zila Parishad, Dhanbad, dated 30th August, 2005 as well as for quashing the notice dated 26th March, 2011 and also for quashing an order, passed by the Commissioner, North Chhotanagpur Division, Hazaribagh dated 5th April, 2011, mainly on the ground that the original petitioner, who is respondent no. 1, has purchased the property, in question, through registered sale deed dated 18.9.1997 and the predecessors-in-title of the original petitioner had acquired the property through sale deed from their father, namely, Kripa Shankar Worah. This Kripa Shankar Worah is the original owner, because, in fact, the property, in question, was originally purchased by three persons, namely, Hari Shankar Worah, Kripa Shankar worn and Narbheram G. Chandhani, by the owner of the property, in 1934 through Benamidar, namely, Prabhulal Pranjivan Patha,. It is vehemently submitted by the learned counsel for respondent no. 1 (original petitioner) that by the documents of the year, 1934 the aforesaid three persons were the owners, but, at the relevant the property was purchased in the name of Prabhulal Pranjivan Pathak, who was Benamidar and his legal heirs have also reduced in writing a document in the year, 1981 that they are not claiming any right over the property in Plot No. 266 and especially DB-I. Moreover, there is also a clarity about the Benamidar of the document of the year, 1997. Learned counsel for respondent no. 1 (original petitioner) has taken this Court to all the three documents and has vehemently submitted that at least the present is not the owner of the property, in question, and if there is any dispute, it is a dispute between the original and its predecessors-in-title, but, in fact, there is no such dispute ever in existence in between the original petitioner and its predecessor-in-title. This aspect of the matter has been properly appreciated by the learned

Single Judge while allowing the writ petition, in favour of the original petitioner. On the query as to why the name of the original petitioner was not mutated in Register-II, learned counsel for the original petitioner submitted that when on an application made before the Circle Officer, the Circle Officer replied that the mutation will have to be made before the Public Works Department of the State of Jharkhand and therefore, there is no mutation in Register II. In fact, the Circle Officer has misguided the original petitioner, otherwise with the help of registered safe deed in their favour, they would have approached for mutation of their names in Register II. Learned counsel for the original petitioner has also taken this Court to some notification, issued about the road, carved out from Plot No. 266 and the said land of the road is now vested with the State of Jharkhand. They are also paying revenue to the State of Jharkhand, more particularly to Public Works Department. In these set of circumstances the encroachment notice by the Zila Parishad, Dhanbad, dated 30th August, 2005 as well as 26th March, 2011 deserve to be quashed and set aside and they have rightly been quashed and set aside by the learned Single Judge. It is further submitted that similarly the order, passed by the Commissioner, North Chhotanagpur Division, Hazaribagh in Appeal No. 99 of 2005 dated 5.4.2011 also deserves to be quashed and set aside, because there is no encroachment at all by the original petitioner, since they are the owner of the property in question and they are in possession of the property, in question, since long and hence the appeal preferred by the appellant (original respondent no. 4) deserved to be dismissed.

9. Learned counsel for the State has submitted that in fact, they have nothing much to say and they are adopting the arguments, canvassed by the appellant-Zila Parishad, Dhanbad and has submitted that in fact, there is nothing like mutation of any name before the Public Works Department of the State, since mutation of name in Register II is to be done before the Revenue authorities and not before the Public Works Department of the State and has also submitted that the order, passed by the learned Single Judge deserves to be quashed and set aside and at the most, if the original petitioner is too much harping upon his ownership, then the original petition should have preferred Title Suit like other two co-encroachers in DB-II, whose suits are already pending before the Civil Judge, Sr. Division-VII, Dhanbad being Title Suit No. 72 of 2006 and 278 of 2007.

10. We have also heard learned counsel for the Mineral Area Development Authority, Dhanbad, who has adopted the arguments, canvassed by the learned counsel for the appellant.

11. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, we hereby quash and set aside the order, passed by the learned Single Judge dated 20th April, 2012 in W.P. (C) No. 2033 of 2011 mainly for the following facts and reasons:

(i) It appears that Zila Parishad had issued Memo No. TP 812 dated 30th August, 2005 for removal of the encroachment, which was upon Plot No. 266 (DB-I). In fact, there are three major occupants, who are illegal encroachers in this Plot No.

266 (DB-I), one of them is respondent no. 1 (original petitioner). The notice dated 30th August, 2005 was given to all the three encroachers, out of whom two had preferred writ petitions being W.P. (C) No. 5244 of 2005 and W.P. (C) No. 5918 of 2005. Both these writ petitions were dismissed by the learned Single Judge vide common order dated 29th March, 2006. In these two writ petitions both the encroachers were also claiming their right, title and interest upon the property, in question, through the very same hierarchy of Prabhulal Pranjivan Pathak, who is so called Benamidar and the actual owners are Hari Shankar Worah, Kripa Shankar Worah and Narbheram G. Chandhani. These two petitioners were also replying the very same background of 1934 upon which the present respondent no. 1 (original petitioner) of the present writ petition being W.P. (C) No. 2033 of 2011 is relying upon and the writ petitions were dismissed by this Court with the following observations:

In the facts and circumstances, as this Court can not determine the question of right and title, as claimed by the petitioners, is not inclined to give any finding in one or other way. Aggrieved party may move before a competent authority or civil court of competent jurisdiction for appropriate relief. It will also be open to the competent authority to act in accordance with law.

Both the writ petitions stand disposed of accordingly.

Interim orders dated 16th September, 2005 and 7th October, 2005, passed in W.P. (C) No. 5244 of 2005 and W.P. (C) No. 5918 of 2005 respectively, stand vacated.

(Emphasis supplied)

(ii) Against this decision, one of the encroachers, who is similarly situated like respondent no. 1 (original petitioner), had preferred L.P.A. No. 185 of 2006. which was also dismissed by a Division Bench of this Court vide order dated 14th September, 2006, as withdrawn. Thus, the order passed by the learned Single Judge in W.P. (C) No. 5244 of 2005 and W.P. (C) No. 5918 of 2005 attained finality, especially on the point that those two petitioners' right and title cannot be determined in the writ petition and they have to approach before a competent authority or a civil court of competent jurisdiction, in accordance with law. These observations have attained finality. The case of respondent no. 1 (original petitioner) is similar to these two petitioners whose writ petitions have been dismissed with the aforesaid observations. We are also therefore, not inclined to entertain the plea of respondent no. 1 (original petitioner) that he has a right, title and interest upon the property, in question, through several documents, as referred to herein above for which no final decision can be given in the writ petition and for which respondent no. 1 (original petitioner) has to file civil suit before a competent court or has to approach the competent authority.

(iii) Thus, as stated herein above, initially the notice was given on 30th August, 2005 to the three encroachers upon Plot No. 266 (DB-I), out of whom two had filed writ petitions, as stated herein above, which were dismissed and against the

order, passed in the writ petitions, L.P.A. No. 185 of 2006, preferred by one of those writ petitioners, was also dismissed, but, the present respondent no. 1 (original petitioner) had chosen to approach the Commissioner, North Chhotanagpur Division, Hazaribagh by way of preferring appeal being Appeal No. 99 of 2005.

Thus, the notice of encroachment dated 30th August, 2005 was challenged by way of Appeal No. 99 of 2005 by the present respondent no. 1 (original petitioner), which was dismissed vide order dated 5th April, 2011 by making an observation that the possession upon the property, in question, as claimed by the encroacher, cannot be decided by the Revenue court, but, it is to be decided by a competent civil court by raising civil dispute u/s 9 of the Code of Civil Procedure.

We have perused the order and we see no illegality committed by the Commissioner, North Chhotanagpur Division, Hazaribagh in deciding Appeal No. 99 of 2005. Whenever a question of title is raised by any party, then the same ought to have been decided by the civil court of lowest available jurisdiction, as per Section 15 of the Code of Civil Procedure.

(iv) It further appears from the facts of the case that other encroachers have already instituted Title Suit Nos. 78 of 2006 and 278 of 2007 before the Civil Judge, Senior Division, Dhanbad and some evidences have also been recorded by the trial court in other two Title Suits, filed by other encroachers of the very same Plot No. 266 (DB-I).

(v) It further appears from the facts of the case that the present respondent no. 1 (original petitioner) had also preferred an application in Title Suit No. 278 of 2007 for getting the present respondent no. 1 to be added as a co-plaintiff, which has been dismissed by the trial court vide order dated 10th August, 2011.

(vi) Thus, it appears that the present respondent no. 1 (original petitioner) has already taken chance before

(a) Commissioner, North Chhotanagpur Division, Hazaribagh; and

(b) By way of preferring an application in Title Suit No. 278 of 2007, pending before the Civil Judge, Senior Division, Dhanbad for joining respondent no. 1 as a co-plaintiff.

(vii) It further appears from the arguments, canvassed by learned counsel for respondent no. 1 (original petitioner) that it is claiming right, title and interest upon the property, in question, by way of one sale deed dated 18th September, 1997 and its predecessor-in-title is claiming right, title and interest upon some documents of the year, 1969. On 21.8.1969 and 24.8.1969 two documents were entered into by two sons Harsukh Rai and Chandra Kant Worah, with their father, namely, Kripashankar. It is further vehemently contended by the learned counsel for respondent no. 1 (original petitioner) that Kripashankar got his share in Plot No. 266 (DB-I) by way of partition, but, in fact, there were three original owners, namely, Hari Shankar Worah, Kripa Shankar Worah and Narbheram G.

Chandhani, who purchased the property in the year, 1934 through Benamidar, namely, Prabhulal Pranjivan Pathak. The documents of the year, 1934, the documents of the year, 1981 (disclaimer document), the documents of the year, 1997 (Benamidar document), the document of the year, 1997 (sale deed) and the documents of the year, 1969 have been pointed out to this Court and on the basis of those documents, the claim upon the property, in question, is made by respondent no. 1 (original petitioner) as a matter of right and as a matter of ownership, which has been vehemently denied by the learned counsel for the present appellant, who is Zila Parishad and it has been stated by the learned counsel for the appellant that right from 1931 there is no ownership vested in the so called three owners, namely, Hari Shankar Worah, Kripa Shankar Worah and Narbheram G. Chandhani, because their names were never reflected in 1934 document at all and, therefore, the so called partition is also illegal and, therefore, the so called share of Hari Shankar Worah is also illegal in the property. Therefore, selling the property by Kripa Shankar Worah to his two sons is also illegal in the eyes of law, because nobody can pass a better title than what he is having and, therefore, none of his two sons, namely, Harsukh Rai and Chandra Kant Worah, can give title to the present respondent no. 1 (original petitioner). It is further stated that the property, in question, cannot be settled in the year, 1934 without prior permission of the Government.

(viii) Thus, it is submitted by the learned counsel for the appellant rightly that neither the names of Hari Shankar Worah, Kripa Shankar Worah and Narbheram G. Chandhani were mentioned in the deed of settlement in the year, 1934 nor their names have been mutated in the records of right nor in Register II. Similarly, the so called Benamidar's name is also not mentioned in Register II nor in the records of right from 1934 onwards. On the contrary, right from 1934 the ownership is vested in the present appellant. Thus, the question of ownership or right, title and interest upon the property, in question, is highly disputed question of facts. Therefore, this Court cannot decide in the writ petition the right, title and interest of respondent no. 1 (original petitioner). This aspect of the matter has not been properly appreciated by the learned Single Judge while allowing the writ petition.

(ix) It also appears from the order of the learned Single Judge that unnecessarily the provisions of Section 3(1) of the Bihar Provincialisation of Roads and Hospitals Act, 1947 has been given too much weightage. In fact, it appears that the road was carved out later on from the property, in question. There was a notification that the road is belonging to the State Government, because the State has to maintain road and unnecessarily much in detail the argument must have been canvassed about the payment of revenue to the Public Works Department of the Government. In fact, Public Works Department has nothing to do with the revenue at all, but, the learned counsel for respondent no. 1 (original petitioner) has also pointed out that there is a mutation in Public Works Department of the Government. This is also shocking and unheard of. This type of concession given by the Public Works Department of the Government is not

giving any extra or additional benefit to respondent no. 1 (original petitioner). Respondent no. 1 (original petitioner) has to stand on its own legs. If respondent no. 1 (original petitioner) is claiming any right, title and interest upon the property, in question, it can be claimed only by way of filing a suit before the civil court and in a writ petition, it cannot be decided. It has been observed by the learned Single Judge that "I am in agreement with the grievance of the petitioner that the members of Society have been subjected to a clear discrimination". This observation has no basis, neither in law nor in facts. It has also been observed by the learned Single Judge that as the original petitioner is in possession of the property, in question, the Zila Parishad is restrained from interfering with the possession. The illegal encroachment is bound to be removed by the present appellant. If the encroacher is unable to establish the legality of the super-structure, the said super-structure is bound to be removed by the Zila Parishad, Dhanbad. As stated herein above, the fact remains that there is a highly disputed question of fact, involved in the writ petition about the right, title and interest upon the property, in question, and, therefore, the writ petition ought not to have been entertained by the learned Single Judge.

12. In view of the aforesaid facts and reasons, we hereby quash and set aside the order, passed by the learned Single Judge dated 20th April, 2012 in W.P. (C) No. 2033 of 2011. Liberty is reserved with respondent no. 1 (original petitioner) to approach the competent authority or civil court of competent jurisdiction by way of filing civil suit or otherwise.

13. If respondent no. 1 (original petitioner) files any civil suit before the civil court of competent jurisdiction, the same will be decided on its own merits and on the basis of the evidences on record, without being influenced by the observations, made by this Court.

14. At this stage, learned counsel for respondent no. 1 (original petitioner) submitted, upon instructions from his client, who is present, that he is ready and willing to file civil suit before the civil court of competent jurisdiction along with an injunction application under Order XXXIX Rule 1 of the CPC and, therefore, let some suitable observations be made that if the injunction application is preferred within two months from today, the same may be decided within the stipulated time and the present appellant may cooperate with the early disposal of at least injunction application.

15. Learned counsel for the appellant-Zila Parishad, Dhanbad submitted that they shall cooperate with the hearing of not only injunction application but also of the suit. Similar is the submission of the learned counsel for the State.

16. In view of the aforesaid submissions for filing of the suit along with the stay application and/or for opening of the seals, applied by the present appellant, I hereby direct the learned trial court to decide the same at the earliest, if possible, within a period of fifteen days after completion of the filing of reply, documents etc. by the other party. With the aforesaid observations, this Letters

Patent Appeal is hereby allowed and disposed of.