

Balram Mahaldar Vs Most. Batia

Court: Jharkhand High Court

Date of Decision: Jan. 27, 2025

Acts Referred: Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 " Section 42, 63

Hon'ble Judges: Anubha Rawat Choudhary, J

Bench: Single Bench

Advocate: Rajeeva Sharma, Om Prakash, Ritesh Kumar, Makanda Khatum

Final Decision: Dismissed

Judgement

Anubha Rawat Choudhary, J

1. This appeal has been filed against the judgment dated 27.04.2017 and decree dated 04.05.2017 passed by learned Principal District Judge,

Sahebganj in Title Appeal No.15 of 2014 whereby the appeal has been dismissed. The Trial Court judgment is dated 05.06.2014 and decree is dated

16.06.2014 which has been passed by Senior Civil Judge " 1, Sahibganj in Title Suit No.3 of 2006 whereby the suit was dismissed on contest. The

plaintiffs are in second appeal before this court. The present appeal stood abated against respondent no.3 vide order dated 16.02.2023.

2. This second appeal, was admitted, on, following, substantial question of law:-

"1. "Whether the order of eviction of defendants passed by S.D.O. and Deputy Commissioner in R.E. Case No. 9/85-86 and Rev. Misc. Appeal No. 19/87-88

by order dated 22.04.1987 and 30.05.1989 respectively can be set aside by Civil Court in T.S. No. 24/89 in utter disregard and flagrant violation of Section 63 of

the Said Act or not?"

2. "Whether the appellate court below while deciding the Title Appeal No. 15/2014 has not considered Section 63 of the Santhal Pargana Tenancy

(Supplementary Provision) Act in its right perspective or not?"

3. The learned senior counsel for the appellant has submitted that one Title Suit No.24 of 1989 was filed by the defendants of this case seeking a

declaration that the order passed by the Revenue Authorities in R.E. Case No.9 of 1985-86 and Revenue Miscellaneous Appeal No.19 of 1987-88

were illegal void and inoperative and not binding on the defendants of this case and a prayer seeking decree for permanent injunction was made in

connection with the suit property. The learned counsel has submitted that the defendants in the said title suit were Kalu Mahaldar, Balram Mahaldar

and Jagdish Mahaldar. He has also submitted that Lakhi Mahaldar was also a party in the title suit whose name was deleted on account of his death

during the pendency of the said title suit.

4. The learned counsel has submitted that the suit was set ex parte and a decree was passed for permanent injunction against the defendants of Title

Suit No.24 of 1989 restraining defendants of Title Suit No.24 of 1989 from dispossessing the plaintiffs of the said suit. Thus, in the Title Suit No.24 of

1989, the order passed in R.E. Case No.9 of 1985-86 and Revenue Miscellaneous Appeal No. 19 of 1987-88 were made inoperative against the

plaintiff of the present suit, who is the appellant before this Court.

5. The learned counsel has further submitted that, in view of bar under Section 63 of the Santhal Pargana Tenancy (Supplementary Provisions)

Act, 1949 [hereinafter referred to as the Act of 1949], the order of the Revenue Courts in the matter of eviction passed under Section 42 of the

aforesaid Act could not be subject matter of suit. The learned counsel submitted that there is a clear bar under the statute and the suit, which was filed

being Title Suit No. 24 of 1989 itself was not maintainable, and the judgment and decree passed therein is not binding on the present plaintiff.

6. The learned counsel has relied upon the judgment passed by this Court in Second Appeal No. 190 of 2019, decided on 19.12.2024, and submits that

similar issue has been decided. He has submitted that one of the substantial questions of law which was framed in said Second Appeal No. 190 of

2019 was:

“(ii) Whether both the courts below committed a grave illegality by ignoring Section 63 of Santhal Parganas Tenancy (Supplementary

Provision) Act, 1949 by ignoring the order of eviction passed by the S.D.O. and Deputy Commissioner in R.E. Case No. 16 of 1975-76 and

R.M.A. No. 51 of 2001-02 respectively?”

7. The learned counsel submits that the said issue has been ultimately decided in favour of the appellant of the case and consequently the judgments

passed by both the trial court as well as the appellate court impugned in the said case have been set aside.

8. The learned counsel has referred to the order passed by the Deputy Commissioner in Miscellaneous Appeal No.19 of 1987-88 and submitted that

before the Deputy Commissioner also, the private respondents were claiming adverse possession, but no material was produced before the Deputy

Commissioner and the order of the Deputy Commissioner became final, which could not have been subject matter of consideration in the earlier Title

Suit No.24 of 1989.

9. He submits that the plea of bar under Section 63 has been considered by the learned Trial Court of this case at internal page No. 10 of the Trial

court's judgment, but the Trial Court held that a judgment was already passed in Title Suit No. 24 of 1989 and the Court was not hearing any

appeal against the said suit. The Trial Court also observed that there is a provision of setting aside ex parte order by way of filing miscellaneous case

within time, but neither such petition was filed nor any appeal was filed against the decree passed in the year 1995 in Title Suit No. 24 of 1989 and

after 11 years, the present suit was filed and the Trial Court also recorded that the present suit itself was barred by limitation. The learned counsel

submits that once it is found that the Title Suit No.24 of 1989 was itself barred by provision of law, the same is void ab initio, illegal, without jurisdiction

and a nullity and therefore, there was no occasion to hold that the present suit was barred by limitation. He has also submitted that the first Appellate

court also did not consider this aspect of the matter properly and dismissed the appeal.

10. The learned counsel for the appellant has also placed the entire judgment and decree, which was passed in Title Suit No. 24 of 1989, and upon

perusal of the same, it reveals that it was stated by the plaintiffs of the said Title Suit No.24 of 1989 that the revenue courts failed to appreciate that

provisions of Section 42 of the aforesaid Act of 1949 can only be attracted in case of non-transferable land but in no circumstances on the suit land,

which are transferable in nature by seeking permission of the Sub-Divisional Officer. Besides it may have also failed to appreciate that the plaintiffs

have long perfected their right, title and possession over the suit land by their continuous peaceful possession much prior to the death of the recorded

tenant in the year 1935-36.

11. The learned counsel has submitted that the Title Suit No.24 of 1989 was barred by Section 63, and therefore, the present suit was filed seeking a

declaration that the ex parte decree passed in Title Suit No.24 of 1989 is void, illegal, inoperative, without jurisdiction and against the provisions of law.

He submits that the suit was fit to be decreed in favour of the present appellant. He submits that the two questions of law which have been framed

are fit to be answered in favour of the appellant.

Finding of the Court

12. The present suit was filed seeking a declaration that the ex-parte decree passed in T.S. 24/89 is void, illegal, inoperative without jurisdiction against

the provision and other law not binding upon the plaintiff and for a further declaration that the ex-parte judgment and decree passed in T.S. No. 24/89

will not be binding upon the eviction order passed by the S.D.O. and Deputy Commissioner in R.E. Case No. 9/85-86 dated 22.04.87 and in R.M.A.

No. 19/87-88 dated 30.05.1989 respectively. a prayer was also made seeking a declaration that the defendants shall have no right, title and any

interest over the suit lands by virtue of the illegal ex-parte decree.

13. It is not in dispute that the order of eviction was passed under the provisions of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949

by the Sub Divisional Officer in R.E. Case No. 9/85-86 dated 22.04.1987 and the same was subject matter of appeal before the Deputy Commissioner

in R.M.A. Case No. 19/87-88 whereby appeal has been dismissed vide order dated 30.05.1989.

14. It is further not in dispute that the said order of eviction in R.E. Case No. 9/1985-86 dated 22.04.1987 and the appellate order in RMA Case No.

19/87-88 was subject matter of Title Suit No. 24/89. The Title Suit of 24 of 1989 was filed seeking a declaration that the aforesaid two orders i.e.

order passed in R.E. Case No. 9 of 1985-86 and RMA Case No. 19/1987-88 were illegal, void and inoperative and not binding on the plaintiffs of the

said case and prayer was also made seeking permanent injunction upon the defendants of the said case from dispossessing the plaintiffs of the said

case from the suit land. The Title suit No. 24/1989 was decreed vide judgment dated 14.03.1995 granting permanent injunction against the defendants

of the said Title Suit of 24 of 1989. The perusal of the decree reveals that the present plaintiff was a party in Title Suit of 24 of 1989. The judgment

and decree passed in the said suit attained finality.

15. Thereafter the present suit was filed by one of the defendants of the earlier suit which was decreed on 05.06.2014 by granting permanent

injunction against which Title was also dismissed and the present second appeal has been admitted on the aforesaid substantial questions of law.

16. It is not in dispute that the order of the revenue authorities in connection with eviction were passed under section 42 of the aforesaid Act of 1949.

Section 42 is quoted as under: -

“42. Ejectment of a person in unauthorized possession of agricultural land. The Deputy Commissioner may at any time either of his own motion or on an

application made to him pass an order for ejectment of any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in

contravention of the provisions of this Act or any law or any thing having the force of law in the Santhal Parganas.”

17. The substantial question of law is relating to the bar to civil courts jurisdiction under section 63 of aforesaid Act of 1949. Essentially the suit

challenged the jurisdiction of the civil court who entertained the Title Suit No. 24/1989 wherein permanent injunction was granted against the

defendants of the said suit from disposing the plaintiffs of the said suit. Section 63 of the aforesaid Act is quoted as under:-

63. Bar to suits. "No suit shall be entertained in any Court to vary, modify or set aside, either directly or indirectly, any order of the Deputy Commissioner

in any application which is cognizable by the Deputy Commissioner under this Act and every such order shall, subject to the provisions of this Act relating to

appeal and revision, be final:

Provided that nothing contained in this section shall bar the jurisdiction of a Civil Court in matters in which it had jurisdiction immediately before the

commencement of this Act.

18. Section 42 deals with ejectment of person who is in unauthorized possession of agricultural land and power has been conferred upon the Deputy

Commissioner to eject any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the

provisions of the Act of any law or anything having the force of law in the Santhal pargana. As per section 63, no suit shall be entertained in any court

to vary or modify or set-aside, either directly or indirectly and nothing contained in section 63 shall bar the jurisdiction of a Civil Court in matters in

which it had jurisdiction immediately before the commencement of this Act.

19. The learned Trial Court while considering the aforesaid plea with regard to Section 63 of the aforesaid Act held that as per the said Section there

is bar of jurisdiction of civil court against the order of revenue courts under the aforesaid Section but there are exceptions also, which are, if any order

passed by the Sub Divisional Officer or the Deputy Commissioner is void and beyond jurisdiction, then suit can be entertained against those orders of

revenue courts by the civil court. The suit was filed alleging fraud and the learned trial court upon appreciating the materials on record rejected the

plea of fraud and also held that the present suit challenging the judgement and decree passed in Title Suit of 24 of 1989 was barred by limitation and

also barred by res-judicata. Apart from aforesaid finding with regards to bar of jurisdiction of trial court under section 63, the learned trial court held as

under: -

a. The learned Trial Court further considered that the main subject in the case was that the judgment was already passed in Title Suit No. 24 of 1989

and that the Trial Court was not hearing an appeal against the decision in the suit and the issue was concentrated on the point as to whether the Title

Suit No. 24/1989 in which decree and judgment was passed, was behind the back of the defendants of the suit fraudulently or not and whether the

redressal against that particular decree and judgment was properly sought for.

b. The learned trial court thereafter went on to record that the defendants in the Title Suit of 24 of 1989 had actively participated for 2-3 years and

thereafter they absented themselves and the learned Trial Court also recorded that the plea of the plaintiff of this case that their father and uncle had

already died in 1984-86 could not be substantiated by any evidence. Rather, a petition for information of death of the defendant in the suit namely

Lakhi Mahaldar was filed by the defendant in Title Suit No. 24/1989 in which date of death was shown as 15.01.1994. Therefore, the learned Trial

Court held that the plea of the plaintiff of this case that Title Suit 24/1989 was passed against dead person could not be substantiated.

c. The learned Trial court also recorded that there was provision under CPC to get set aside a decree passed ex-parte by filing miscellaneous case or

by filing appeal but the judgment and decree was passed way back in the year 1995 against which no appeal/suit/miscellaneous suit was filed by the

plaintiff of the said case within limitation and after 11 years the present suit was filed seeking to annul the judgment and decree and even in the plaint,

no reasonable cause was shown for such delay and how the plaintiff of the present case got knowledge about the judgment and decree of Title Suit

No. 24/1989 and what point of time. The learned Trial Court further held that the suit was barred by limitation and also concluded that it was not

based on fraudulent act of the defendants and therefore the judgement and decree of Title Suit No. 24 of 1989 was binding upon the plaintiff of the

present suit.

d. The learned Trial Court also held that the suit was not only barred by limitation but also barred by res-judicata by holding that the matter of the suit

is more or less same and was directly or substantially matter in issue in the Title Suit No. 24 of 1989.

20. This court finds that the learned trial court rejected the plea of fraud in the matter of decree passed in Title Suit of 24 of 1989 and further held that

the suit was barred by limitation. With respect to the bar of jurisdiction of civil court under section 63 of the aforesaid Act, the learned trial court held

that as per the said Section there is bar of jurisdiction of civil court against the order of revenue courts under the aforesaid Section but there are

exceptions also, which are, if any order passed by the Sub Divisional Officer or the Deputy Commissioner is void and beyond jurisdiction, then suit can

be entertained against those orders of revenue courts by the civil court.

21. The Appellate Court has also recorded about the bar of jurisdiction under Section 63 of the aforesaid Act in paragraph no. 17 of the judgment and

observed that P.W. 1 had stated in paragraph 5 of his evidence that the possession of the suit property was given to the defendants in the year 1973-

74 on yearly $\tilde{A}\tilde{c}\tilde{a}$, \tilde{A} Thika $\tilde{A}\tilde{c}\tilde{a}$, \tilde{A} (Salami) but they stopped payment from the year 1977-78 whereafter the plaintiff filed Eviction Case No. 9 of 1985-86

before the Sub Divisional Officer, Sahibganj who directed the eviction of the defendant vide order dated 20.04.87 which was confirmed by the Deputy

Commissioner, in RMA No. 19/87. The Appellate Court also recorded that according to the plaintiff the respondents came in possession of the suit

property in the year 1975-76 and it was never sold in their favour. The learned Appellate Court has also recorded that it has come in evidence of the

defendants that suit property was already sold by the recorded raiyat in favour of respondent no. 1 before 23 years when computed from 1935-36 as

he died in the year 1935-36. The plaintiff had pleaded that Bulaki Mahaldar, the recorded tenant died in the year 1940. The Appellate Court also

observed that the father and uncle of the plaintiff filed Title Suit No. 4 of 1977 wherein they have admitted in the plaint of that suit that recorded

tenant Bulaki Mahaldar died in the year 1935-36. The Appellate Court rejected the contention of the plaintiff that Bulaki Mahaldar died in the year

1940. The learned Appellate Court also considered Exhibit-A and observed that it clearly proved that the property was in possession of the defendants

from before 1973 and the allegation of the plaintiff that the possession of the suit property was given to the defendants in the year 1975-76 was

falsified. The learned court has also recorded that Lakhi Mahaldar, the father of the plaintiff filed Title Suit No. 4 of 1977 against Most. Maini Devi

stating that Lakhi Mahaldar had taken loan from husband of Maini Devi and entrusted the suit property in favour of her husband who came in

possession and cultivated the same and Bulaki Mahaldar went away to another village after 23 years of making over the suit land to the respondents.

22. The learned Appellate Court recorded that from Exhibit-F it was apparently clear that the possession of the suit property was given to the

ancestors of the respondents before 23 years from departure of Khatiyani Raiyat (recorded tenant) Bulaki Mahaldar to Mednipur who died in the year

1935-36 and accordingly it was held that the suit property was given to the respondents for enjoying its usufruct in the year 1912. The Appellate Court

recorded that the plaintiff was bound by the averments made in the Title Suit No. 4 of 1977 of his father according to which possession of the suit

property was given to the husband of the respondent no. 1 in the year 1912 and accordingly their statement that the possession of the suit property

was given to respondents in the year 1975-76 stood falsified in view of exhibit-A and exhibit-F.

23. Thereafter the learned Appellate Court held that question of entitlement of defendants of the suit property was already adjudicated and decided in

Title Suit No. 24 of 1989. It was also held that since the defendants were in the possession of the suit property from the year 1912, there was no

illegality in the judgment and decree passed by the learned Trial Court.

24. Upon perusal of the judgement which was passed in Title Suit No. 24 of 1989 it was the specific case of the plaintiff that the Revenue Court failed

to appreciate the provisions of Section 42 of the Santhal Pargana Tenancy (Supplementary Provisions) Act which could only be attracted in case of

non-transferable land but in no circumstances on the suit land which were transferrable in nature by seeking permission of Sub Divisional Officer. It

was also their case in Title Suit of 24 of 1989 that besides the above, the plaintiffs had long perfected their right, title, interest and possession over the

suit land by their continuous peaceful possession much prior to the death of the recorded tenant in the year 1935-36.

25. Thus, the Title Suit of 24 of 1989 was touching upon the jurisdiction of revenue authorities to entertain and pass order of eviction vide order passed

in R.E. Case No. 9 of 1985-86 and RMA Case No. 19/1987-88 and therefore it cannot be said that in view of bar under section 63 of the aforesaid

Act, the Title Suit of 24 of 1989 was itself not maintainable. The learned Trial Court in the present case has rightly recorded that there was no

complete bar in connection with the bar under section 63 of the aforesaid Act of 1959 but there are exceptions when the order passed by the S.D.O.

is void or without jurisdiction the suit could be entertained. Even the section 63 of the aforesaid Act reveal that there is no complete bar and the civil

court has the jurisdiction in matters in which it had jurisdiction immediately before the commencement of the Act.

26. In the judgment relied upon by the learned counsel for the appellant passed by this court in Second Appeal No. 190 of 2019 decided on 19.12.2024,

similar issue, as quoted above, was framed as has been framed in the present case. Although the appeal has been allowed by answering the

substantial question of law in favour of the appellant but it has also been observed in paragraph 28 of the judgement that bar under section 63 has

exception, like the order of the Deputy Commissioner was without jurisdiction. In the said judgement, in the absence of any exceptions where suit

could be filed despite Section 63 [like the Deputy Commissioner was without jurisdiction], this Court held that both the courts below committed a grave

illegality by ignoring the provisions of Section 63 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 as the suit was essentially to

avoid the order passed by the Deputy Commissioner, in exercise of power under Section 57 of the Santhal Parganas Tenancy (Supplementary

Provisions) Act, 1949; the same is barred by section 63 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949. The relevant

paragraph 28 is as under:-

“28. As has been reiterated by the Hon'ble Patna High Court in the case of Tarini Marandi & Others vs. Lakshmi Mahto & Other (supra), Section 63 of

the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, prohibits any suit inter alia to avoid any order of the Deputy Commissioner and in this

case, the order of the Deputy Commissioner is for eviction of the plaintiff from the suit land passed in R.M.A. No.51 of 2001-02. It is needless to mention here that

there is a provision for revision against the order passed by the Deputy Commissioner in R.M.A. No.51 of 2001-02 but in the absence of any exceptions where suit

can be filed despite Section 63 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, like the Deputy Commissioner was without jurisdiction,

as contended by the learned counsel for the respondents, this Court has no hesitation in holding that both the courts below have committed a grave illegality by

ignoring the provisions of Section 63 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 as the suit being essentially to avoid the order

passed by the Deputy Commissioner, Jamtara in R.M.A. No.51 of 2001-02 which was passed in exercise of power under Section 57 of the Santhal Parganas

Tenancy (Supplementary Provisions) Act, 1949; the same is barred by section 63 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949. So, the

second substantial question of law “whether both the courts below committed a grave illegality by ignoring Section 63 of Santhal Parganas Tenancy

(Supplementary Provision) Act, 1949 by ignoring the 18 S.A. No.190 of 2019 order of eviction passed by the S.D.O. and Deputy Commissioner in R.E. Case No. 16

of 1975-76 and R.M.A. No. 51 of 2001-02 respectively” is also answered in the affirmative.

27. Both the trial court and the first appellate court in the present case arising out of Title Suit No. 3 of 2006 have held that the defendants were in

possession of the suit property much prior to 1935-36 (year of death of recorded tenant) and were in possession since the year 2012. Even in earlier

Title Suit No. 24 of 1989 similar findings were recorded that plaintiff of the said case were in peaceful possession of the suit property since the life

time of the recorded tenant. In view of the aforesaid circumstance jurisdiction to exercise power under Section 42 of the 1949 Act dealing with

eviction was under consideration. Consequently, bar of jurisdiction of civil court under section 63 is also not attracted as point of jurisdiction of the

revenue authorities was involved in Title Suit of 24 of 1989. This aspect of the matter has also been taken care of by the learned trial court in the

present case by observing that there was no complete bar in connection with the bar under section 63 of the aforesaid Act of 1949 and there are

exceptions when the order passed by the S.D.O. is void or without jurisdiction and under such circumstances the suit could be entertained. This court

is of the considered view that it cannot be said that the Title Suit No. 24 of 1989 was entertained and decided in utter disregard and flagrant violation

of Section 63 of the Act of 1949.

28. Thus, the Civil Court in the earlier Title Suit No. 24/89 had committed no illegality in entertaining the suit and it cannot be said to have entertained

the suit in utter disregard and flagrant violation of Section 63 of the said Act while granting permanent injunction in connection with order of eviction of

defendants of the present suit passed by S.D.O. and Deputy Commissioner in R.E. Case No. 9/85-86 and Rev. Misc. Appeal No. 19/87-88 by order

dated 22.04.1987 and 30.05.1989 respectively. This court is also of the view that the appellate court in the present case arising out of title suit no. 03

of 2006 has duly considered Section 63 of the Santhal Pargana Tenancy (Supplementary Provision) Act in its right perspective while upholding the

judgement of the trial court.

29. Accordingly, both the substantial questions of law are hereby decided against the appellant and in favour of the respondents.

30. The fact remains that this appeal has abated as against respondent no. 3 who had expired during the pendency of this case but not substituted.

This is over and above the fact that both the courts have recorded that the present suit was barred by limitation and the allegation of fraud as alleged

by the plaintiff was also rejected by both the courts. Neither any substantial question of law has been framed on the aforesaid points nor any

arguments were advanced with regards to limitation/res-judicata/alleged fraud. This court is of the considered view that irrespective of the substantial

questions of law framed and answered by this court, once the suit was held to be barred by limitation and the point of fraud was also rejected, the

court had no option but to dismiss the suit.

31. Having answered the substantial questions of law as aforesaid, this second appeal is dismissed.

32. Pending interlocutory application, if any, is dismissed as not pressed.