

Bhuglu Soren Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Feb. 5, 2025

Acts Referred: Code of Civil Procedure, 1908 â€” Section 80

Chota Nagpur Tenancy Act, 1908 â€” Section 90

Bihar Public Land Encroachment Act 1956 â€” Section 16

Bihar and Orissa Municipal Act, 1922 â€” Section 377

Hon'ble Judges: Anubha Rawat Choudhary, J

Bench: Single Bench

Advocate: Abhishek Kumar Dubey, Dina Kant Roy

Final Decision: Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard learned counsel appearing for the parties.

2. This second appeal has been filed against the Judgement and decree dated 27.06.2022 (Decree sealed & signed on 11.07.2022) passed by the

learned District Judge-II, Seraikella-Kharsawan in Title Appeal No.17 of 2018 whereby and whereunder the appeal was dismissed, confirming the

Judgment and decree dated 30.09.2008 (Decree sealed & signed on 10.11.2008) passed by the learned Munsif, Seraikella in Title Suit No.43 of 1999

and Title Suit No.26/2007 whereby and whereunder the suit was dismissed on contest.

3. The plaintiffs had filed the suit against the defendants for declaration of right, title and interest over the suit land and for recovery of khas

possession of the same and also for injunction.

4. Arguments of the appellants.

a. Although there are concurrent findings recorded by both the Courts but substantial questions of law arise for consideration in this case.

b. The appellant was claiming title on the basis of an unregistered Patta executed by the then zamindar of Seraikella on 30.04.1945. Pursuant to the

Patta the original plaintiffs started paying rent to zamindar and after abolition of zamindari, he continued to be in possession of the property.

c. In the remarks column of the Khatiyan, the plaintiff was shown to be in possession of the property and there was certain erroneous entry which

continued till 1989 but as soon as he came to learn about it he filed a case under Section 90 of the Chhotanagpur Tenancy Act before the Charge

Officer, Singhbhum Settlement at Jamshedpur which was registered as Case No. 7/89-90 and vide order dated 02.05.1996, the plaintiff was found in

possession of the suit land since 1945 and the class of land was also corrected as Makan Sahan and Bari land instead of Purani Parti which was

earlier recorded. The said order became final.

d. The plaintiff perfected his right, title and interest over the suit land which he acquired in the year 1945 from the Ruler of the Saraikella Estate and

continued his uninterrupted peaceful possession since then.

e. The defendant No. 1, who has no right, title and interest over the suit property allowed the defendant Nos. 2 and 3 to act arbitrarily without taking

recourse to law to dispossess the plaintiff from the suit land which casted a doubt with regard to right, title and interest of the plaintiff and therefore,

the plaintiff instituted the suit for declaration of his right, title and interest and recovery of khas possession of the suit land when the cause of action

arose on 06.04.1999 and the defendants illegally undertook construction over the suit land.

f. Though it was never the case of the defendants that the Executor of the Hukumnama was not the then zamindar, still the Appellate Court while

upholding the judgment of learned Trial Court recorded that the case of the plaintiff is based on alleged Hukumnama and as per English translation the

Hukumnama was executed by Sur Sattpati and not by the Ruler who has no title over the property and on this basis the Appellate Court held that the

Hukumnama -Patta (Ext. 3) was not executed by the Competent Authority. Such finding is beyond the pleadings of the respective parties and

therefore, the Appellate Court has misdirected itself by giving the said findings on the basis of which judgment of the Trial Court has been upheld.

5. The specific case of the plaintiffs was that Raja of Seraikella by a Hukumnama dated 30.04.1945 settled the suit land which was his khas property

with the plaintiff on permanent raiyati right upon acceptance of a sum of Rs.500/- as Salami; rent was assessed and the landlord used to realise the

same regularly. The plaintiff by his personal labour reclaimed the land and converted into homestead land and constructed a residential house on a

portion of the suit land and the rest portion of the suit land was used as Angan and Bari land. During the Revisional Survey Operation, the final

publication was made in the year 1964 and the land was wrongly recorded in the name of Defendant No.1. Subsequently, in the year 1980-83, in

survey and settlement operation, the suit land was again wrongly recorded in the name of Defendant No.1. However, in the remarks column of the

Khatian, the possession of the plaintiff has been noted, but the date of possession was wrongly shown as 1960 instead of 1945. When the plaintiff

came to know about it, he instituted a proceeding under Section 90 of the Chotanagpur Tenancy Act which was registered as Case No. 7/89-90 and

the Charge Officer vide order dated 02.05.1996 found the possession of the plaintiff since 1945 and the class of land was also corrected as *ĀḥḥMakan*

Sahan and Bari land *Āḥḥ* instead of *ĀḥḥPurani PartiĀḥḥ* as earlier recorded. The order passed under Section 90 of the Chotanagpur Tenancy Act

was never challenged by the defendant No.1.

6. However, in the year 1997, the plaintiff filed an application before the L.R.D.C. Seraikella praying therein for fixation of fair rent in which report

was called for. During the pendency of that application, Defendant No.3 in the month of April, 1999 demolished the residential house *Ā*, of *Ā*, the *Ā*,

plaintiff *Ā*, and *Ā*, started *Ā*, construction *Ā*, of *Ā*, market *Ā*, complex. Ultimately, the petitioner filed writ petition before the Hon *Āḥḥ*ble Patna High

Court, Ranchi Bench numbered as C.W.J.C. No. 976 of 1999 (R). The Hon *Āḥḥ*ble High Court while disposing the said writ petition directed the

petitioner to seek remedy before the Deputy Commissioner, Singhbhum (W) at Chaibasa. Accordingly, the plaintiff moved before the Deputy

Commissioner by filing a representation which was registered as Revenue Misc. Case No.1 of 1999-2000. However, the Deputy Commissioner

passed order on 09.07.1999, rejecting the representation of the plaintiff and directed him to seek relief before the competent Court of Civil Jurisdiction.

The further case of the plaintiff was that plaintiff had already perfected his right, title and interest over the suit land which he had acquired in the year

1945 from the Ruler of the Seraikella State and continuing his uninterrupted peaceful possession since then. Consequently, the suit was filed.

7. All the defendants filed a joint written statement and objected to the maintainability of the suit in the present form and stated that there was no

cause of action and the suit also suffers from non-joinder and mis-joinder of necessary parties. The suit was said to be barred by limitation, principle of

adverse possession under the Specific Relief Act and also under Section 16 of the Bihar Public Land Encroachment Act 1956. The suit also suffered

for want of notice under Section 80 of CPC and also for want of notice under Section 377 of Bihar and Orrisa Municipal Act.

8. So far as the merits is concerned, it was the case of the defendants that the property was never settled through any Hukumnama and the claim was

bogus. At the relevant point of time in the year 1945, the plaintiff was a minor and he was never a raiyat of Adityapur in the year 1945 and hence, the

question of settlement in his favour did not arise. It was also alleged that the Hukumnama was not in the prescribed paper which was used by the

Ruler and the signature of authorities was also not genuine. Further case was that plaintiff's name was never assessed in rent, nor he ever paid

rent for the said land. The suit land was originally an Anabad Malik lands of the Ruler of the erstwhile Seraikella State which duly vested under Bihar

Land Reforms Act and same was rightly recorded in the name of State of Bihar in 1958-64 survey settlement and also in the survey of 1983, it was

correctly recorded in the name of State of Bihar. The nature of the land was also recorded as Purani Parti and at no point of time, plaintiff ever

possessed the suit land in any manner. It was also alleged that the plaintiff wrongly managed to get a case registered under Section 90 of the

Chotanagpur Tenancy Act being Case No. 7/89-90, after the statutory period of filing such case and without serving any notice or information of the

said case. It was alleged that the order passed in Case No. 7 of 1989-90 under Section 90 of the CNT ACT was a nullity and did not affect the right,

title and interest of the State over the suit land. It was also asserted that in the year 1999, there was an encroachment drive. Consequently, the

plaintiff had moved writ petition being C.W.J.C. No. 976 of 1999 (R) and demolition of the structure standing over the suit land was denied. It was

alleged that the suit land was lying parti and anti-social elements were trying to occupy the same. As per the resolution of Notified Area Committee,

Adityapur dated 28.05.1997, there was a proposal to construct market complex under self-investment scheme and thereafter the construction was

carried out and the Notified Area Committee Adityapur became the absolute owner of the suit land. It was asserted that plaintiff's claim was on

the basis of wrong and illegal order under Section 90 CNT Act. The learned Trial Court framed as many as 10 issues which are as follows:

- (1) Is the suit maintainable in its present form or for the relief sought?
- (2) Has the plaintiff got any cause of action for this suit?
- (3) Has the plaintiff acquired right, title, interest over the suit land by taking settlement from the then Ruler of Seraikella State?
- (4) Whether the suit suffers from non-joinder and mis-joinder of parties?
- (5) Whether the suit is barred by law of limitation?
- (6) Whether the suit is barred u/s 16 of the B.P.L.E. Act 1956?
- (7) Whether the suit is barred under the provisions of C.N.T. Act?
- (8) Whether the suit is barred under Bihar & Orissa Municipal Act?
- (9) Whether the land belonged to Seraikella State and it came under the ownership and possession of State of Bihar and was rightly recorded in the name of State of Bihar?
- (10) Is the plaintiff entitled to the relief as prayed?

9. The learned trial court discussed the Issue Nos. (3) & (9) in Para- 12 and considered the material on record and held as under:

“On the basis of above discussion, I find and hold that the suit land was originally Anabad Malik lands of Ruler of erstwhile Seraikella State and it duly come

under the ownership and possession of State of Bihar and was rightly recorded in the name of State of Bihar. If there was a Hukumnama / Patta in favour of

plaintiff, the plaintiff would file a petition for fixation of rent after merger of Jamindari of Raja of Seraikella into State of Bihar before the proper authority.

Further had there been any such settlement in favour of plaintiff, the C.S. survey khatian could have been corrected in the name of the plaintiff. It has been raised

by the plaintiff that the suit land was settled by him by the Ruler of Seraikella in 1945, but the plaintiff (PW 4) admitted in para-33 of his cross-examination that

in 1945, he was about 16-17 years old. Therefore, he was minor at the time of taking settlement from Raja of Seraikella. Hence, question of settlement during the

said year is against the law then prevailing in Seraikella State. The DW-1 fully supported the case of defendants and stated that the suit land is rightly recorded

in the name of State of Bihar in R.S. Survey settlement as well as in NAC survey settlement. Further I find and hold that the plaintiff did not file any objection

during R.S. operation since 1958-64. The plaintiff also not filed any objection during NAC Survey of 1977-83. Therefore, he was not in possession over the suit

lands on the basis of Hukumnama. Hence, the plaintiff did not acquire right, title and interest over the suit lands by taken settlement from the then Ruler of

Seraikella State. Therefore, these issues are decided in favour of the defendants.”

10. Further, with regard to order under Section 90 of the CNT Act, it was observed that a dispute involving disputed question of title or possession can

only be decided by Civil Court in a suit and not under Section 90 of the CNT Act and the learned Trial Court observed that it appears from the order

of the Charge Officer that he acceded his jurisdiction and the case under Section 90 of the CNT Act was itself filed after the prescribed period of

limitation and thus, this Court finds that upon going through the material on record and inter alia on the basis of the deposition of the plaintiff himself

that he was 16-17 years old in the year 1945 and was a minor, the Court ultimately recorded that there was no question of any settlement from Raja

of Seraikella to a minor and ultimately recorded that the suit land was rightly recorded in the name of State of Bihar in Revisional Survey Settlement

as well as in the Notified Area Committee Survey Settlement.

11. No objection was filed during Revisional Survey Operation of 1958-64, nor the plaintiff filed any objection during notified area committee survey of

1977-83. The learned Court recorded that the plaintiff was not in possession of the suit on the basis of Hukumnama.

12. From perusal of the record, it appears that the plaintiff did not file any rent receipt in support of his claim either issued by Maharaja of Seraikella or

issued by the State of Bihar.

13. The Point of determination before the 1st Appellate Court was as follows:

(a) Whether the plaintiff/ appellant has right, title and interest over the suit land on the basis of the alleged Hukumnama dated 30.04.1945 of Seraikella State

and settlement?

(b) Whether the suit land belonged to ruler of Seraikella State as Anabad malik land and same was vested along with other lands of mauza Adityapur with the

State of Bihar and whether same was rightly recorded in the name of State of Bihar?

14. The Appellate Court also considered the materials on record and gave concurrent findings and again observed that plaintiff was a minor at the

time of the alleged settlement. No document recording fixation of rent etc. was filed. The property was recorded as Anabad Bihar Sarkar. The

plaintiff did not file any objection after RS Operation and CS Operation. The learned Appellate Court further recorded that the plaintiff had filed the

suit on the basis of alleged Hukumnama/ Patta i.e. Ext. 3 which was marked with objection. The learned Court recorded that the same was not acted

upon rather, Ext. 1 which is a khatian of the suit established that the land stood recorded in the name of Anabad Bihar Sarkar. Learned Court also

recorded that in the remarks column of khatian, possession of plaintiff has been recorded, but said entry cannot give right of title over the suit property.

It was also observed that the Hindi translation of Hukumnama reveal that it was executed by one Sur Satpathi, and not by the Ruler, who has no title

over the suit property. The learned Appellate Court held that the alleged Hukumnama / Patta (Exhibit-3) is not executed by a competent person. The

learned appellate court finally held that the learned trial court has rightly dismissed the suit and there is no infirmity in the judgment of the learned trial

court and accordingly dismiss the appeal.

15. This Court finds that both the Courts have given concurrent findings after considering materials on record including concurrent finding on the fact

that the plaintiff was a minor in the year 1945 and therefore, there was no question of any settlement in favour of the plaintiff at that point of time and

admittedly the land was recorded in name of Anabad Bihar Sarkar. The plaintiff also did not produce any rent receipt either from the landlord or from

the State of Bihar. So far as the plea of adverse possession is concerned, the plaintiff claimed adverse possession from 1945 and also claimed title on

the basis of Hukumnana from the same date and thus the plea of adverse possession and title were inconsistent. The claim of possession of the

plaintiffs was also disputed throughout. Further the argument of the appellant that the appellate court had gone beyond the pleadings is also not

acceptable as the Hukumnana was never admitted by the defendants and there were multiple reasons cited by the learned courts to disbelieve the

case of the plaintiffs.

16. There are concurrent findings based on scrutiny of materials on record. The learned counsel has not been able to point out any perversity with

regards to appreciation of materials on record by the learned courts. This court finds that no question of law, much less any substantial question of law

arises for consideration in this case. No substantial question of law arises for consideration in the present second appeal.

17. Accordingly, this appeal is hereby dismissed.