

(2004) 07 JH CK 0002**Jharkhand High Court****Case No:** S.A. No. 164 of 2002

Most. Kasida Devi and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)
and Another

RESPONDENT

Date of Decision: July 22, 2004**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2004) 4 JCR 331**Hon'ble Judges:** Narendra Nath Tiwari, J**Bench:** Single Bench**Advocate:** N.K. Prasad, for the Appellant; Shamim Akhtar, S.C. II, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Narendra Nath Tiwari, J.

This appeal is against the judgment and decree of the affirmation passed by the Additional District Judge, Dhanbad in Title Appeal No. 49 of 1992.

2. The plaintiff is the appellant-appellant. He filed Title Suit No. 13/76 in the Court of Sub-Judge, Dhanbad which was ultimately tried and disposed of by the Sub-Judge, 5th Dhanbad.

3. The plaintiff in the said suit had prayed for declaration of his title over the suit land as well as for declaration that the order dated 21.11.1986 passed by the L.R.D.C. Dhanbad in B.P.L.E. Case No. 25 of 1965, the order dated 9.8.1967 passed by the Collector of Dhanbad in M.R.A. No. 22 of 22/67 and the order dated 24.10.1967 passed by the Commissioner in Revision Petition No. 5/67 are null and void and the same have not affected the possessory right, title, interest and possession of the suit land.

4. The plaintiff's case was that he had been in possession of the suit land being an area of 40 decimals of Plot No. 652 Khata No. 136 of Mauza Hirapaur District Dhanbad. The father of the plaintiff constructed a house over the suit land and cultivated vegetables over the rest of the suit land. According to the plaintiff, his father was in possession of the said land since 1931 and after the death of his father he inherited the suit land. According to the plaintiff, having been in continuous possession since 1931 he acquired good title by adverse possession, to the notice and knowledge of Jharia Raj Estate and after vesting of the Zamindari to the knowledge of the State of Bihar. According to the plaintiff, the said plot was recorded as "gairabad malik" in the record of rights prepared in course of the last survey settlement operation of 1925 but thereafter his father acquired valid, right and title by adverse possession. The said land was not vested in the State of Bihar even after vesting of intermediary right. The further case was that on a frivolous report of the B.D.O. Dhanbad a case u/s 147 of the Indian Penal Code was instituted against the appellants' ancestor late Mani Nath Singh which was ended in his acquittal. Subsequently a land encroachment case was initiated against him being B.P.L.E. Case No. 25 of 1965/66 and the L.R.D.C. passed an order for eviction of the plaintiff from an area of 4 decimals forming portion of the suit land. The plaintiff preferred an appeal and thereafter revision but could not succeed. According to him, the land is not a public land and the land encroachment proceeding was wholly without jurisdiction. The plaintiff thereafter served a notice u/s 80 of the CPC on the State of Bihar and other authorities and after expiry of the statutory period, plaintiff filed Title Suit No. 359 of 1967 which was subsequently withdrawn with a permission to file a fresh suit on the same cause of action. Hence the instant Title Suit No. 13/1976 was filed.

5. The defendant-State of Bihar contested the said suit by filing a written statement. In the written statement, the defendant challenged the maintainability of the suit on various grounds. According to the defendant, the suit plot No. 652 measuring 50 decimals was recorded as "gairabad malik" which was vested in the State of Bihar under the provision of the Bihar Land Reforms Act, 1950. The plaintiff illegally erected a hutment over the suit land. Under the said circumstance a proceeding under the Bihar Public Land Encroachment was initiated and in the said proceeding the order for plaintiffs removal was passed which was confirmed by the appellate authority. According to the defendant, the suit against the said orders is not at all maintainable.

6. On the basis of the pleadings of the parties several issues were framed by the trial Court. Among the issues, issue No. 4 was as to whether the plaintiffs have acquired title over the suit land by adverse possession and issue No. 5 was as to whether the suit land is a public land and the same has vested in the State of Bihar. The trial Court, on thorough consideration and appreciation of the evidences, recorded its findings that the plaintiff has not acquired right and title by adverse possession and the suit land has been vested in the State of Bihar. He further held that the suit

land is a public land over which the plaintiffs is trespasser and as such he was rightly evicted by the orders passed in Bihar land encroachment proceedings and the order passed by the authorities evicting the plaintiff from the suit land were perfectly legal and valid.

7. Being aggrieved by the said order, the plaintiff filed an appeal before the District Judge, Dhanbad being T.A. No. 49 of 1992, which was heard and disposed of by the Addl. District Judge Dhanbad. The lower appellate Court, after thoroughly scrutinizing the evidences and materials on records, has concurred with the findings recorded by the trial Court. The lower appellate Court found that there is absolutely no infirmity and illegality in the judgment and decree passed by the trial Court and dismissed the appeal.

8. Mr. Prasad learned counsel for the appellants has submitted that the judgment and decree of both the Court below are based on incorrect appreciation of the evidences on record and the findings of fact have not been properly arrived at. According to him, the judgment and decree of both the Courts below are vitiated in law and are liable to be set aside by this Court.

9. The very objection raised by the learned counsel appearing for the appellants is related to pure question of facts. Both the Courts below have thoroughly considered the case of the parties and evidences on record and have concurrently found that the plaintiff has not acquired title by adverse possession and the suit land is a public land. In view of the said concurrent findings of facts this Court cannot go behind the same and cannot reappraise the evidences on record in exercise of its jurisdiction as second appellate Court.

10. In the view, I find no merit in this appeal. It is accordingly dismissed.