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**(2007) 05 JH CK 0004**

**Jharkhand High Court**

**Case No:** Appeal From Appellate Decree No. 115 of 1990

Amar Singh and Others

APPELLANT

Vs

Swarn Singh

RESPONDENT

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**Date of Decision:** May 15, 2007

**Citation:** (2007) 2 BLJR 1809 : (2007) 4 JCR 106

**Hon'ble Judges:** M.Y. Eqbal, J

**Bench:** Single Bench

**Advocate:** P. Gangopadhyay, for the Appellant; Debi Prasad and L.K. Lal, for the Respondent

**Final Decision:** Allowed

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**Judgement**

M.Y. Eqbal, J.

This second appeal by the defendants-appellants is against the judgment of reversal.

2. The plaintiff filed Title Suit No. 22 of 1979 for declaration of title over the suit property and for recovery of possession. The said suit was dismissed by Subordinate Judge, Jamshedpur in terms of judgment and decree dated 13<sup>th</sup> September, 1982. Aggrieved by the said judgment and decree, the plaintiff preferred Title Appeal No. 02 of 1982 which was allowed by the 2nd Additional District Judge, Jamshedpur in terms of judgment and decree dated 12<sup>th</sup> June, 1990 and set aside the judgment and decree of the trial Court. Hence, this Second Appeal by the defendants.

3. The facts of the case lie in a narrow compass:

The suit property is tiled katcha house comprising of rooms and varanda etc. surrounded by boundary walls. The suit property was purchased by the plaintiff's father from one Mohan Singh. Plaintiff's case was that thereafter the suit property was allotted to the father of the plaintiff by TISCO Ltd, Jamshedpur for residential purposes. The plaintiff along with his father Dhanna Singh was residing in the said house. After the death of plaintiff's father Dhanna Singh some times in 1953,

defendant No. 4 filed a petition before the Land Department, TISCO for allotment of the said holding in her favour on the ground that she is wife of Dhanna Singh. The TISCO Ltd. Jamshedpur accordingly mutated the name of defendant No. 4 with respect to the suit house for residential purposes. Plaintiff's further case was that the defendant No. 4 did not pay the municipal rent and the mortgage money in respect of the mortgage of the house to one Madho Singh and ultimately the plaintiff paid the same. It was further pleaded that in 1956, TISCO Ltd. sent a notice in the name of defendant No. 4 for payment of allotment charges and the plaintiff paid the allotment charges and continued possession of the said house in his own right and since then he had been possessing the house premises and perfected his title by adverse possession. The plaintiff's further case was that in the year 1970, the defendants forcibly trespassed one of the rooms of the house premises and started living there. One more room was also trespassed by the defendant for which the plaintiff filed criminal cases. In this way, the plaintiff claimed declaration of title of his own right by adverse possession.

4. The defendants appeared and filed written statement stating inter alia that the suit premises was originally purchased by Dhanna Singh, who was the absolute owner. Defendant No. 4 is the wife and defendant Nos. 1 to 3 are the sons of Dhanna Singh. It was further stated that first wife of Dhanna Singh died in the year 1942 and, thereafter, the suit premises was acquired by them. Defendants' further case is that defendants have been, at all point of time, residing in the same house and the allegation of trespass is absolutely false and fabricated. The defendants further pleaded that in the criminal cases instituted by the plaintiff for trespass, the defendants were acquitted.

5. The trial Court framed only one issue i.e. "Whether the defendant No. 4 Smt. Thakri Kaour is legally married wife of deceased Dhanna Singh and whether defendant Nos. 1 to 3 are the legal heirs of deceased Dhanna Singh through defendant No. 4 Thakri Kour."

6. The trial Court, after appreciation of entire evidence, recorded a finding that defendant No. 4 is legally married wife and defendant Nos. 1 to 3 are the legitimate sons of Dhanna Singh. The trial Court further recorded a finding that defendant No. 4 had been living as wife of Dhanna Singh till his death and thereafter continued living in the suit premises at all point of time. On these findings, the trial Court dismissed the suit.

7. The appellate Court, on the other hand, recorded a finding that not a single chit of paper has been filed on behalf of the defendants to substantiate their contention that the suit premises was joint family property of the defendants and the plaintiffs. The appellate Court further recorded that the suit premises was allotted in the name of the plaintiff by TISCO Ltd. On these findings the appellate Court reversed the judgment and decree passed by the trial Court.

7. At the time of hearing of this appeal, the following substantial question of law was framed:

Whether in view of the finding of the court below to the effect that the appellants are legal heirs of Dhanna Singh, the plaintiff-respondent's suit could have been decreed by the learned court of appeal below on reversal of the judgment of learned trial court on the ground that the suit property was allotted in the name of the plaintiff by the TISCO Ltd. although, the plaintiff admitted in the plaint that the suit properties stood in the name of the defendant No. 4 in the records of TISCO LTD.

8. I have heard Mr. P. Gangopadhaya, learned Counsel appearing for the appellant and Mr. L.K. Lal, learned Counsel appearing on behalf of the respondents.

9. The plaintiff-respondent specifically and categorically admitted in the plaint that after the death of his father, Dhanna Singh, the name of defendant No. 4 was mutated in the records of Tisco Ltd as the wife of Dhanna Singh in respect of the suit premises. However, it was pleaded that subsequently the plaintiff paid the alleged mortgage dues and the monthly ground rent to Tisco Ltd in respect of the suit property.

10. The trial court recorded a conclusive finding that defendant No. 4 was the wife and defendant Nos. 1 to 3 were the sons of late Dhanna Singh. The trial court further recorded a finding that the defendants have been living in the same suit house. The trial court discussed the evidence of all the witnesses in detail and finally held that the plaintiff has failed to produce the documents to prove the fact that the suit property was allotted to him by Tisco Ltd and he has been living in the suit house on his own right.

11. The appellate Court made out a third case and curiously shifted the onus on the defendants to prove that the suit premises was joint family property of the defendants and the plaintiffs and it was not allotted afresh in the name of the plaintiff. In absence of any document in support of allotment of the suit premises by Tisco Ltd. in favour of the plaintiff, the appellate court held that the plaintiff has been able to establish the case that the suit premises was not joint family property and the plaintiff is entitled to the relief sought for in the suit.

12. Prima facie I am of the view that the appellate court proceeded on a wrong direction while deciding the issues involved in the suit. As noticed above, the trial court recorded a finding that defendant No. 4 was the legally married wife of Dhanna Singh and this finding has not been disturbed by the appellate court. In that view of the matter, the finding of the appellate court that the suit premises was allotted afresh in favour of the plaintiff by Tisco Ltd. on the failure of defendant No. 4 to pay the ground rent, is perverse in law and is wholly erroneous. Admittedly the plaintiff is the son of the first wife of Dhanna Singh whereas defendant No. 4 is the second wife and defendant Nos. 1 to 3 are the sons from the second wife. The appellate court has also not disturbed the finding recorded by the trial court that

both the plaintiff and the defendants have been residing in the same house. In the light of those findings also the judgment and decree passed by the appellate court reversing the finding of the trial court, is perverse in law. The plaintiff-respondent is, therefore, not entitled to a decree of exclusive right, title and interest over the suit property.

13. For the aforesaid reason, this appeal is allowed and the impugned judgment and decree passed by the appellate court in Title Appeal No. 02 of 1982 is set aside and the judgment and decree passed by the trial court is restored. Consequently the suit is dismissed.