

(2003) 12 JH CK 0010
Jharkhand High Court
Case No: AFAD No. 96 of 1987 (R)

Baijun Oraon and Others

APPELLANT

Vs

Ashok Kumar Minz

RESPONDENT

Date of Decision: Dec. 16, 2003

Acts Referred:

- Limitation Act, 1963 - Article 68
- Specific Relief Act, 1963 - Section 34

Citation: (2004) 2 JCR 489

Hon'ble Judges: Gurusharan Sharma, J

Bench: Single Bench

Advocate: Jaya Roy, for the Appellant; P.K. Prasad, for Respondent No. 2(a), for the Respondent

Final Decision: Dismissed

Judgement

Gurusharan Sharma, J.

Title Suit No. 5 of 1981 was filed for declaration of the plaintiffs' title over the suit land, detailed in Schedule "B" to the plaint, measuring 1.44 acres and for further declaration that the sale deed dated 23.6.1953 said to have been executed by their respective father and mother along with the heirs of the recorded tenant Budhan Uraon in favour of the defendant No. 1 was void and not binding on them.

2. According to the plaintiffs, it was detected on 25.11.1980 that the defendant No. 1 fraudulently obtained a sale deed in his favour on 23.6.1953 and the defendants 2 and 4 orally told them that they had never executed any sale deed in favour of the defendant No. 1.

3. On the other hand, case of the defendant No. 1 was that Somar Uraon died before 1939, leaving behind his minor son, Bijan Uraon, and widow Mosstt. Bandhani. Similarly on the death of Ganesh Uraon, his entire interest in the suit land devolved upon his sons, Lalo, Fagu, Chauthl, Jhari and Ramlal. On 23.6.1953, Bandhani, the

widow of Somar, son of Budhan for herself and on behalf of her minor son, Baijan, as his guardian along with five sons of Ganesh, another son of Budhan executed a registered sale deed in his favour and sold the suit land, measuring 1.44 acres of plot No. 155, appertaining to Khata No. 28, situated in village Lakhey, in Hazaribagh district, for valuable consideration and he came into physical possession thereof. The reason for transfer according to the defendant No. 1 was that both Somar and Ganesh had left village Lakhey, during their life time before 1939 and had shifted to village Pundari and so their heirs had difficulty in cultivation of the suit lands and they had also to repay loan incurred in the Shradh of their respective father Somar and Ganesh.

4. The suit was decreed holding that it was not barred by time. There was no clear evidence to show that the plaintiffs ancestors had shifted from village Lakhey to village Pundari. The defendant No. 1 failed to explain the circumstances under which the sale deed, Exhibit B, was executed in the year 1953. He also failed to prove his possession over the suit land for more than the statutory period. It was part land and nothing was brought on record to prove adverse possession of the defendant No. 1. The plaintiff No. 1 was a minor in the year 1953, as such alienation of his property could have been made only for his benefits.

5. The defendant No. 1 preferred appeal, which was allowed. The Trial Court's judgment and decree was set aside and the suit was dismissed. The plaintiffs have, therefore, preferred this second appeal, which was admitted on 7.9.1988 on the following substantial question of law :--

"The substantial question of law involved in this appeal is as to whether the Court of appeal below committed an error in applying the principles of Hindu Law to the parties, who are admittedly tribals?"

6. The Court of appeal below held that Bandhani as natural guardian of the plaintiff No. 1 had every right to execute the sale deed along with other legal heirs of the recorded tenant for payment of antecedent debt. The execution of the sale deed, Exhibit B was legally proved. It was not got executed by the defendant No. 1 by practicing fraud. Exhibit B was, therefore, legal valid and for consideration. All the plaintiffs were residing in village Pundari. The defendant No. 1 alternatively perfected his title by adverse possession by remaining in possession of the suit land for more than 12 years". The plaintiffs, being out of possession did not pray for recovery of possession as consequential relief in the suit and filed the suit, merely for declaration of title and Exhibit B to be void, the suit was barred u/s 34 of the Specific Relief Act. The suit was also barred by time, under Article 68 of the Limitation Act, 1963 as the sale deed of the year 1953 was challenged in the year 1987 and prayer was made to declare the same as void.

7. Now coming to the above substantial question of law framed in this appeal, I find that in the two Courts below no controversy was raised regarding any local custom

which debarred the mother of the minor plaintiff No. 1 to be his natural guardian and her authority as guardian to transfer his property for his benefit in the year 1953. Nor of any bar applicable to her inheritance of the estate left by her deceased husband.

8. It is well settled that merely for the reason that the party concerned was a tribal and, therefore, they were not governed by Hindu Law, cannot be presumed unless any such custom was pleaded and proved by cogent evidence.

9. In this regard reference may be made to a decision of the Apex Court in [Saraswathi Ammal Vs. Jagadambal and Another](#), wherein it was held that no rule can be evolved merely on logical grounds and it was incumbent on a party settling up a custom to allege and prove the custom on which he relied and such custom cannot be extended by analogy and it cannot be established by mere submission at the second appellate stage.

10. The Apex Court in this regard has gone to the extent that even the oral evidence as to the instances which could have been proved by the documentary evidence could not be safely relied upon to establish the custom.

11. So, in my opinion, in absence of any pleading and proof of such custom that the parties were not governed by Hindu Law, as claimed by the appellants in the present second appeal, the aforesaid substantial question of law framed in this appeal did not arise to be decided herein.

12. The impugned judgment and decree of the Court of appeal below are affirmed and the appeal is dismissed. No costs. Appeal dismissed.