

(2008) 08 JH CK 0032

Jharkhand High Court

Case No: None

Fagua Oran and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 28, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Constitution of India, 1950 - Article 14, 19, 21, 300A
- Specific Relief Act, 1963 - Section 34

Citation: (2008) 4 JCR 249

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

The petitioners have preferred this writ petition for issuance of a writ of certiorari or any other appropriate writ, order or direction to quash the impugned order dated 17.2.1997 and 21.9.2001 passed by the Deputy Commissioner, Gumla and Deputy Collector, Land Reforms, Gumla who are arraigned as respondent Nos. 2 and 3 herein whereby and whereunder both the statutory authorities held that the possession of the lands and the instrument of transfer are in favour of the respondent Nos. 5 and 6.

2. The facts in brief are set out as under:

According to the petitioners the lands in question have various plots and Khata No. 194, Khata No. 131 measured 6.34 acres and 0.76 acres of village Nazma Police Station, Sisai, District-Gumla and the same was recorded In the name of Chotka Klmani Oraon son of Deva Oran, Kharia Oraon and others who were In possession

of the aforesaid land. It has further been submitted that on 16.11.1994 the petitioners Gafua Oran, Karma Oran, Jhiran Oran, Biria Oraon filed Title Suit No. 29 of 1994 before the Civil Court with the following prayer:

For declaration of title to the lands described in schedule A & B of the plaint and the petitioners further prayed that the order passed in permission case No. 137/91-92 dated 5.5.1992 and order of permission appeal No. 21/92-93 dated 28.6.1994 be declared illegal, void and not binding on the plaintiffs/petitioners herein. They have further prayed to declare that the Sada deed of gift dated 17.11.1957 of defendant Nos. 1 and 2 in the suit is illegal and not binding on the plaintiff.

3. It appears .that the learned Sub-Judge-I ordered that the plaintiffs suit be and the same is hereby decreed ex parte without cost against defendant Nos. 1, 2, 3 and it is decreed ex parte vide order dated 25.1.1997 against proforma defendants.

4. It is submitted that the respondent Nos. 5 and 6 namely Barti Oran and Bandhani Oran filed an application for mutation of names with regard to plot Nos. 1579, 242, 1176, 1495, 1498, 1500, 1577, 1578, 1580, 1175, 1344, 1165, 1495 and 1497, total 16 plots measuring 7.10 acres of Khata Nos. 194 and 131 of village Nazma Police Station. Sisai, District-Gumla. The said case was numbered as Mutation Case No. 20 of 1995-96. By order dated 18.1.1995 the Circle Officer sought for a report from Halka Karmachari and also issued general information. On 24.1.1995 the Halka Karmachari submitted its report that the applied plots were recorded in the name of Haria Oraon vide final order dated 24.4.1995.

5. The Circle Officer, Sisai after considering all the aspects and rival contentions held that the petitioners hold the land and there is a decree of a competent Civil Courts in their favour in Title Suit No. 29/1994 and the contention of respondent Nos. 5 and 6 that the sale deed of 1992 is pursuant to gift on plain paper and the permission of transfer granted in Case No. 137-A/1991-92 and order of permission in appeal No. 21/92-93 was illegal and accordingly rejected the application for mutation. Respondent Nos. 5 and 6 being aggrieved and dissatisfied with the order dated 20.4.1995 preferred an appeal before the learned Deputy Collector, Land Reforms, Gumla which was numbered as Mutation Appeal No. 13/95-96 and vide order dated 17.2.1997 the respondent No. 3 allowed the appeal and set aside the order of respondent No. 4. The petitioners, being dissatisfied with the aforesaid appeal and order moved before the Deputy Commissioner, Gumla. The said case was numbered as Case No. 3R-15/1997-98. The Deputy Commissioner, Gumla vide its order dated 21.9.2001 disallowed the appeal of the petitioners after considering the contention of the respective parties which is sought to be challenged before this Hon"ble Court by way of the present writ petition.

6. The main contention raised by the petitioners, is that the order dated 17.2.1997 and 21.9.2001 passed by respondent Nos. 2 and 3 is illegal and without jurisdiction. The second contention raised is that the decree and judgment of competent Civil

Courts in Title Suit No. 29 of 1994 has attained finality and is binding on all. It has further been contended that the respondent Nos. 2 and 3 have committed error of jurisdiction and the orders are violative of Articles 14, 19, 21 and 300-A of the Constitution and in any case they cannot override the order passed by the competent Civil Courts.

7. The respondent Nos. 2, 3 and 4 in their reply have submitted that partition between co-sharers have taken place and full details have been given in the order passed by respondent Nos. 2 and 3. It has further been submitted that respondent Nos. 5 and 6 were enjoying the property in question on the basis of registered deed of gift which was prepared after due permission and after taking proper recourse to law and the petitioners have no right to the land in question which they are now claiming. According to respondents the factum of possession is the main consideration for grant of mutation and from 1957 the respondents are in possession of the said property in question by virtue of deed of gift which was made in presence of the panchayat and they paid the rent for the property in question to the State after holding the possession of the said land as Haria Oraon has only one son Bhupan Oraon and Bhupan Oraon has no son except daughters hence he obtained the permission and got the land registered in their names and all the formalities were completed and permission was granted in accordance with law.

8. The title suit was filed by the petitioners only in the year 1994 and the decree passed thereto is of no consequence for the sole reason that no consequential relief of possession was either prayed for or granted in the title suit which is mandatorily required under the proviso to Section 34 of the Specific Relief Act. Even otherwise under Article 65 of the Limitation Act, 1963 a suit for declaration of title can be filed only within a period of 12 years. In the instant case the petitioners have sought to challenge the gift deed of 1957 in the year 1994. It is even otherwise not maintainable and liable to be rejected. u/s 46 3rd Proviso (a) an occupancy raiyat who is the member of scheduled tribes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift or will to another person who is a member of the scheduled tribes. In the instant matter a permission case was filed u/s 46 of Chota Nagpur Tenancy Act before the Sub-Divisional Officer, Gumla for transfer of the land by Bhupan Oraon, son of the recorded tenant Kharia Oraon, Barti Devi and others who are respondent Nos. 5 and 6 herein and the same was recorded as Case No. 137/91-92. The said permission case was allowed by the Sub-Divisional Officer, Gumla and the declaration was upheld by the Court of Additional Collector, Gumla in case No. 31/92-93 and it was neither challenged nor assailed and has thus attained finality in accordance with the provisions of Chota Nagpur Tenancy Act. A revision could have been filed but the petitioner instead chose to file a title suit without any prayer for possession or consequential relief and obtained an ex parte decree which has no value in the eyes of law and is inexecutable.

9. A gift deed was executed on the basis of permission case No. 137/91-92 in favour of respondent Nos. 5 and 6 herein and thus the possession of the land and the instrument of transfer are valid, legal and in favour of the respondent Nos. 5 and 6. u/s 258 of the Chota Nagpur Tenancy Act there is a statutory bar to entertain suit in certain cases and the same is quoted as under:

Bar to suits in certain cases.--Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside, either directly or indirectly, and (decision), order or decree of any Deputy Commissioner or Revenue Officer in any suit (application) or proceeding u/s 20, Section 32, Section 35, Section 42, Section 46, Sub-section (4), Section 49, Section 50, Section 54, Section 61. Section 63, Section 65, Section 73, [Section 74(A)], Section 75, Section 85, Section 86, Section 87, Section 89 or Section 91 (Proviso), or under Chapters XII, XIV, XV, XVI or XVIII, except on the ground of fraud or want of Jurisdiction and every such decision, order or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and, subject to the provisions of this Act relating to appeal, shall be final.

10. It will be evident on reading the aforesaid provisions that it includes Section 46 as well and as such no suit shall be entertained in any Court to follow, modify or set aside either directly and indirectly any decision, order or decree of any Deputy Commissioner or Revenue Officer taken u/s 46 of Chota Nagpur Tenancy Act.

11. A [Paritosh Maity and etc. Vs. Ghasiram Maity and Another](#), had an occasion to consider as to whether a civil suit for declaration of title and confirmation of possession challenging the entries In the Revenue Court was maintainable even after insertion of Clause (ee) in Section 87(1) of Chota Nagpur Tenancy Act, 1908. The Full Bench held that the exclusion of jurisdiction of the Civil Court has to be examined with reference to the provisions of the Act and it was of the opinion that Section 87(1) undoubtedly permit a suit to be instituted before a Revenue Officer within the narrow period of limitation of 3 months from the date of certificate of final publication of the record of rights for deciding any dispute regarding any entry which a Revenue Officer has made or omitted from such recourse. However, it held that Section 87 provides for a suit of the aforesaid nature but it even remotely said that a suit for declaration of title and confirmation of possession or recovery of possession cannot be entertained by any Civil Court. The Full Bench was of the opinion that only in cases where the provision of the statute provides for inclusion of jurisdiction of Civil Courts, It has to be strictly construed. The Full Bench at Paragraph 15, while considering Section 258 held that "The stage is now set for a consideration of Section 258 which bars suits in certain case. What, however, deserves notice at the very outset is that even this section is not creating an absolute bar of jurisdiction against the Civil Courts, but only a conditional bar applicable In certain cases specified therein." And finally it held that if actual resort has been made to a suit u/s 87 then for an identical lis Section 258 would bar a further resort to the Civil Courts excepts on the grounds of fraud or want of

jurisdiction.

12. Even u/s 9 of the CPC the Courts have Jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In the instant case the statutory permission and the appeal permission was granted u/s 46 of Chota Nagpur Tenancy Act which is included/specified u/s 258 of the Chota Nagpur Tenancy Act and thus it clearly bars civil suit.

13. The factum of possession is the main consideration for grant of mutation and the admitted position remains that from 1957 the private respondents are in possession of the property in question by virtue of a deed of gift which was made in presence of the panchayat and thereafter they paid the rent for the property in question to the State after holding the possession of the said landed property. The fact remains that Hariya Oraon had only one son namely Bhupan Oraon and Bupan Oraon had no son except daughters and in that view of the matter he obtained statutory "permission and got the land registered in their names and all these formalities have been done strictly in accordance with law. It will be evident that the possession of the land in question always remained with respondent Nos. 5 and 6 and the permission case was filed u/s 46 of the Chota Nagpur Tenancy Act in the Court of Sub-Divisional Officer, Gumla for transfer of the abovementioned land by Bhupan Oraon, i.e. son of the recorded tenant Sri Kharia Oraon to Barti Devi and others which was recorded as case No. 137 of 1991-92. The said permission case was allowed by the Sub-Divisional Officer, Gumla and the decision was further upheld by the Court of appeal i.e. Additional Collector, Gumla in appeal No. 31 of 1992-93 and accordingly the gift deed was registered/executed by the petitioner vide gift deed No. 2172/94 in permission case No. 137 of 1991-92 in favour of the respondents i.e. Barti Devi and others. Neither any case was made out nor any documentary proof was produced before the Civil Courts to declare the registered gift deed as null and void. Even otherwise the Civil Suit was not maintainable u/s 258 of the Chota Nagpur Tenancy Act against the statutory permission granted by the statutory authority.

14. On consideration of the aforesaid factual and legal background of the case, I come to the conclusion that the suit for declaration as decreed in Title Suit was without any prayer or order for consequential relief of possession and thus it is neither executable nor enforceable against the private respondent Nos. 5 and 6. The execution of the gift deed was valid, legal and was rightly upheld by respondent Nos. 2 and 3, who were the statutory authorities under the Chota Nagpur Tenancy Act and they were legally authorized and justified in upholding the possession over the land and instrument of transfer in favour of respondent Nos. 5 and 6. The fact remains that the gift deed was of 1957, which is sought to be challenged as an after thought by filing a title suit in the year 1994 is even otherwise barred by limitation. The decree passed in the Title Suit is neither enforceable nor maintainable due to statutory bar u/s 258 of the Chota Nagpur Tenancy Act.

In the aforesaid background, the present writ petition being devoid of any merit is. accordingly, dismissed without any order as to costs. Petition dismissed.