(2003) 04 JH CK 0051

Jharkhand High Court

Case No: L.P.A. No. 23 of 1993

Smt. Katrina Toppo		APPELLANT
	Vs	
Matilda Urain and Others		RESPONDENT

Date of Decision: April 21, 2003

Acts Referred:

- Chotanagpur Tenancy Act, 1908 - Section 71, 71A

Citation: (2003) 3 BLJR 1770 : (2004) 2 JCR 378

Hon'ble Judges: P.K. Balasubramanyan, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: Devi Prasad and Lalit Kumar Lal, for the Appellant; Srijit Choudhary and Achinto Sen, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Balasubramanyan, C.J. and R.K. Merathia, J.

One Sohan Oraon was the owner of 19 decimals of land in plot No. 1241 under khata No. 408 of Dumar Toli village. He had three sons, Donde Oraon, Ahlad Oraon and Daniel Oraon. Daniel and Ahlad sold 10 decimals of land out of the 19 decimals to Silbanus Lakra under exihibit 4 dated 18-6-1967. Daniel Oraon, the third son, in his turn, sold 2.5 decimals of land to the said Silbanus Lakra on 20-6-1967 under exhibit 4-A. Thus Silbanus Lakra acquired rights over 12.5 decimals of land. On 28-10-1970, Silbanus Lakra sold the said 12.5 decimals of land to the plaintiff in the present suit. The daughter-in-law and grand son of Daniel, the son of Sohan Oraon, brought to the notice of the Deputy Commissioner u/s 71-A of the Chhotanagpur Tenancy Act, the fact that the alienations by Donde Oraon, Ahlad Oraon and Daniel Oraon to Silbanus Lakra were without the prior permission of the Deputy Commissioner as contemplated by Section 46 of the Act and consequently the said transfers were to be treated as void, as the transferee was not a member of the scheduled tribe and that the land was liable to be restored to them as a successors in interest of the three sons of Sohan Oraon. A proceeding was consequently

initiated by the Deputy Commissioner. The proceeding was opposed by the transferee by contending that the land was not raiyati land, that Sohan Oraon had himself constructed a house in a portion of the land and was residing therein with his family, that the land had lost its character of raiyati land, that in any event it was Chhaparbandi land and hence there was no question of the transfers in favour of Silbanus Lakra the transferor of the plaintiff, being null and void. The Sub-divisional Officer, who was exercising the power of the Special Officer under the Act after a due enquiry, held that the land was raiyati land, that it had not been converted into non-raiyati land by user and that the transactions effected by the sons of Sohan Oraon were hit by Section 46 of the Act and consequently, the heirs of the transferor were entitled to restoration of possession. The plaintiff being aggrieved by that order, challenging the same in an appeal u/s 215 of the Act. The Appellate Authority, set aside the order of the original authority and remanded the proceeding to the original authority for a fresh disposal in the light of the observations contained in that order. The original authority, thereafter, by order dated 23-8-1988 held that the applicants before him, namely, the daughter-in-law and grand son of Daniel were entitled to restoration of possession of the land.

2. Even prior to the final order being passed by the original authority on 23-8-1988, the plaintiff had approached the Civil Court with the present suit for a declaration of his title and possession and for a further declaration that the order dated 23-6-1987 passed by the original authority was void for want of jurisdiction. Subsequently, the plaint was got amended by including therein a challenge to the appellate order as well as the subsequent order passed by the original authority, for declaration of title and possession of the plaintiff, and for a further declaration that the orders passed by the authorities under the Act were void for want of jurisdiction. The plaintiff pleaded that the land was not raiyati land but was Chhaparbandi land, that the Special Officer had no jurisdiction to entertain a proceeding or for passing an order u/s 71-A of the Act; that when the sale-deeds were executed by Daniel Oraon and Ahlad Oraon, the land was Chhaparbandi land; that the defendants who are claiming through the son of Sohan Oraon, being the heirs were bound by the recitals in deed executed by their predecessor in interest, that the order of the authority under the Act was without jurisdiction since jurisdiction of that authority was confined to dealing with raiyati lands transferred by a person belonging to a Scheduled Tribe and in that situation, the order for restoration was bad in law for want of jurisdiction and that the title and the possession of the plaintiff should be upheld. This was sought to be met by the defendants in the suit claiming to be the daughter in law and grand son of Daniel by pleading that the orders of the authorities were passed well within their jurisdiction; that the suit was hit by Section 258 of the Act; that the land was always raiyati land and it had never lost its character as raiyati land and that the plaintiff was not entitled to any relief.

3. Evidence was taken. The trial Court on an appreciation of that evidence, held that the land was raiyati land that Sohan Oraon had not constructed a building on the

raiyati land, but had put up a building in an adjacent piece of land and was residing therein, that the only building put up in the disputed land was by the plaintiff after the purchase of the land and in that situation, the land was clearly raiyati land and continued to be raiyati land on the date of transfers. The trial Court placed considerable reliance on Exhibits - A and A/1 in support of its conclusion that the land was raiyati land. It further held that the order passed by the Special Officer did not suffer from want of jurisdiction, that he had jurisdiction to restore possession of a raiyati land in terms of Section 71-A of the Act and hence the plaintiff could not be granted any relief. The suit was dismissed. On appeal by the plaintiff, a learned Single Judge of this Court, on a reappreciation of the pleadings and the evidence in the case, came to the conclusion that the land was raiyati land that it had not lost its character as raiyati land, that the plaintiff had proved that Sohan Oraon had constructed a building in a portion of the property prior to the sale, that the building was constructed only by the plaintiff after the alienation in his favour and in that situation, the findings of the trial Court on those aspects were to be accepted. The learned Judge also held that there was no reason to interfere with the orders of the authority under the Act in the suit, in the context of Section 258 of the Act, since it could not be said that any fraud was established in the case. Thus confirming the decision of the trial Court, the appeal was dismissed.

4. At this stage, we may also notice one other aspect. While the appeal was pending, the plaintiff, the appellant, made an application for an injunction restraining the authorities concerned from actually restoring possession of the property to defendants 1 and 9. This Court on that application passed an order to the following effect:--

"The appellant has prayed for an order injuncting the respondents to demolish the suit premises till the pendency of the appeal. The respondents have succeeded in a proceeding u/s 71-A of the C.N.T. Act. In the said proceeding, he has prayed for delivery of possession. Evidently, the appellant has lost in the suit also. In this situation, in my opinion, the status-quo in relation to the suit in question is to be maintained subject to the condition that the appellant shall deposit a sum of Rs. 10,000/- before this Court by way of security; so that the said amount, in the event of the dismissal of the appeal, may be directed to be paid in favour of the respondent".

5. On filing this Letters Patent Appeal, the plaintiff applied for and obtained an interim order of stay of operation of the judgment of the learned Single Judge until further orders. The Division Bench, in its order dated 18-11-1993, took note of the deposit of the sum of Rs. 10,000/- before this Court by the plaintiff by way of security.

6. Learned counsel for the plaintiff-appellant contended that the land was Chhaparbandi land as is clear from the recitals in the document executed by the predecessors of defendant Nos. 1 and 2 who were stopped from contending that the land was not Chhaparbandi land in their capacity as the legal representatives of

the assignors, that it has necessarily to be held that the authority concerned had acted without jurisdiction in ordering restoration u/s 71-A of the Act. Counsel submitted that once it is clear that the land is not raiyati land, the authority concerned did not have jurisdiction to order restoration either in terms of the Section 46 or Section 71A of the Act. Counsel also relied on certain portions of the evidence in support of his plea that Sohan Oraon, the original recorded tenant, had himself constructed a building in a portion of the land and was residing therein. As against this, learned counsel for defendant Nos. 1 and 2, submitted that the evidence had been properly appreciated by the trial Court and by the learned Single Judge, and that there was no reason to interfere with the finding recorded by those Courts to the effect that the land continued to be raiyati land. Counsel, with reference to Exts. A and A/1, pointed out that Khatiyan prepared in the years 1932-34 did not indicate the the existence of any house in plot No. 1241, the suit land, and on the other hand, they indicated that the house was in plot No. 1225 lying to the south east of the suit land and recorded in the name of Sohan Oraon, the recorded tenant of the suit land. Counsel sought to derive further support for this position from Ext. B map produced in the case. Counsel also pointed out that the evidence clearly indicated that the only building in the suit property was constructed by the plaintiff, after taking an assignment of the land from Silbanus Lakra. With reference to Section 6 of the Act, counsel submitted that the land was clearly a raiyati land and once it is so held, there was no reason either to set aside the order of the authority under the Act or interfere with the decisions of the Courts below. He also submitted that once the land was found to be raiyati land, there was no question of any want of jurisdiction in the authority concerned and the suit itself was not maintainable.

7. For the purpose of this case, we do not think it necessary to consider the question of maintainability of the suit in the Civil Court in a case of this nature. We think that the appeal can be disposed of on the facts found and on the evidence available in the case. The evidence discussed by the trial Court and the learned Single Judge clearly show that the land, of which Sohan Oraon was a recorded tenant, was a raiyati land. The case of the plaintiff is that Sohan Oraon had constructed a residential building in portion of the suit land. Apart from Section 21 of the Act referred to a learned Single Judge, even assuming that the construction of a residential building by Sohan Oraon would bring about an alteration in the character of the land, it has to be noted that the evidence accepted by the trial Court and by the learned Single Judge, clearly show that Sohan Oraon had not put up a residential building in the suit land but had put up a residential building only in the adjacent plot of land, which is a different plot of land. In this situation, the finding that the land continued to be a raiyati land does not appear to warrant any interference. After all, once it admitted that it was a raiyati land, there may even be a presumption that it continued to be so, unless, of course, the plaintiff refuted that presumption by clear evidence to the effect that the character of the land had

changed in between.

8. Once the finding that the character of the land has not altered is accepted, it has necessarily to be taken that the land remained a raiyati land. If it remained a raiyati land, obviously, the authority under the Act had the jurisdiction to order restoration of possession in a proceeding initiated u/s 71 of the Act. Faced with this situation, learned counsel for the plaintiff-appellant argued that the defendants were estopped from contending that the land was not Chhaparbandi land in the light of the description of the land in Exhibits 4 and 4-A executed by the sons of Sohan Oraon: It cannot but be said that there is some force in the submission on behalf of the plaintiff-appellant, specially since the defendants are claiming under or through the sons of Sohan and would clearly be bound by the recitals in the documents executed by their predecessor, though they may be able to prove otherwise. But as observed by the learned Single Judge, attempts were generally being made to get over the bar created by Section 46 of the Act which was brought into force with the object of protecting a person belonging to a Scheduled Tribe from himself. The learned Judge has discussed the circumstances which justifies the finding that the recitals in Exts. 4 and 4-A cannot be treated as conclusive on the facts and in the circumstances of the case. The learned Single Judge has also referred to the circumstances available from the evidence including the evidence furnished by exhibits A and B, that the character of the land never changed at least until the time of transfer in favour of the plaintiff by the transferee from the predecessors of the defendants. In this situation, the argument based on estoppel cannot be accepted. After all, in the context of a welfare legislation like the Act, the evidence is sufficient to show that the land is raiyati land. According to us, the evidence clearly establishes that the land continued to be a raiyati land. In any event on the evidence accepted by the trial Court and affirmed by the learned Single Judge, we see no adequate ground to interfere in exercise of our jurisdiction under Clause 10 of the Letters Patent Appeal, even though we are entitled to interfere, even if only an error of fact has been committed by the learned Single Judge.

9. As we noted once we agree with the finding that the land was a raiyati land, the plaintiff cannot succeed. There was no case that the transfers by the sons of Sohan Oraon were with the requisite prior permission from the authority concerned in terms of Section 46 of the Act. Therefore, clearly, the transactions Exts. 4 and 4-A, the foundation of title of the plaintiff, have to be found to be invalid or void in terms of the Act. In such a situation, an order u/s 71 of the Act has to be held to be fully justified and well within the jurisdiction of the authority concerned. Thus, no interference with the decision of the learned Single Judge is warranted and the appeal deserves to be dismissed.

10. What remains is the issuance of a direction regarding the sum of Rs. 10,000/- deposited by the appellant in this case when he filed the first appeal. In terms of the order which we have quoted above, we direct that the said amount of Rs. 10,000/-

deposited in this Court, be paid over to the defendants, the respondents in the appeal. They will be entitled to withdraw the said sum from this Court.

11. We thus, confirm the decision of the learned Single Judge and dismiss this appeal. But in the circumstances, we make order as to costs. We direct that the sum of Rs. 10,000/- deposited by the appellant in this Court, be disbursed to a defendants-respondents.