

A JANAM SINGH KUDADA & ANR.

v.

STATE OF BIHAR & ORS.

(Civil Appeal No. 2575 of 2001)

B AUGUST 27, 2019

[R. F. NARIMAN, R. SUBHASH REDDY  
AND SURYA KANT, JJ.]

*Suit:*

C *Suit for declaration that the plaintiffs were rightful owners*  
*of half share of the suit property - Suit decreed in respect of the*  
*entire suit property - Applying Wilkinson's Rule i.e. accepting the*  
*award passed by majority members of Panchayat - Appellate*  
*Authority affirmed the order - Writ petition was dismissed by Single*  
D *Judge of High Court - Division Bench of High Court affirmed the*  
*order of Single Judge - Appeal to Supreme Court - Held: In the*  
*suit plaintiffs had claimed only half the suit property, hence decree*  
*awarding anything beyond the claim is liable to be set aside to that*  
*extent - In view of s. 2 of Kolhan Civil Justice Act also, the*  
E *concurrent judgments, made on the basis of Wilkinson's Rule*  
*cannot be set aside - Bihar Kolhan Civil Justice (Regulation and*  
*Validation) Act, 1978 - s. 2.*

**Disposing of the appeal, the Court**

F **HELD:** In view of the fact that it is only half the property  
which went to the plaintiffs, as referred to in the plaint, that was  
the subject matter of the Suit, the decree will have to be set  
aside to the extent that it awards anything beyond this. In view  
of section 2 of Bihar Kolhan Civil Justice (Regulation and  
Validation) Act, 1978 as well, which admittedly has not been  
G challenged by the appellants, it is difficult at this point of time  
to set aside the concurrent judgments which were made on the  
basis of application of Wilkinson's Rules. [Paras 8, 10] [1021-  
A-B; 1022-A]

H *Mora Ho v. State of Bihar and Others AIR 2000 Patna*  
**101 - referred to.**

**Case Law Reference**

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**AIR 2000 Patna 101** referred to **Para 1**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2575 of 2001.

From the Judgment and Order dated 27.07.2000 of the High Court of Judicature at Patna, Ranchi Bench in L.P.A. No. 251 of 2000(R).

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Akhilesh Kumar Pandey, Adv. for the Appellants.

Ms. Nandini Sen, Deba Prasad Mukherjee, Jayesh Gaurav, Gopal Prasad, Advs. for the Respondents.

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The Judgment of the Court was delivered by

**R. F. NARIMAN, J.**

1. After hearing learned counsel on behalf of the appellants for some time, and after having gone through the relevant provisions of the Constitution of India, the Wilkinson Rules and the Full Bench Judgment in '*Mora Ho v. State of Bihar and Others*' reported as AIR 2000 Patna 101, we are of the view that it may not be necessary to go into the applicability and/or validity of the Wilkinson's Rules in this matter for two reasons.

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2. First and foremost, as is correctly pointed out by the learned counsel appearing on behalf of the appellants/defendants in the Suit, what was claimed in the Suit was only half the Suit property and not the entirety of the property as follows:

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3. Paragraph 3 of the plaint states "Sura Ho died issueless and the lines of the parties became entitled to half and half of these lands". This was the suit property over which the plaintiffs claimed a declaration that they are rightful owners and for confirmation of their possession, and consequentially, correction of the entry made in the Record of Rights of 1963.

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4. Despite this being the claim in the plaint, by an order dated 30.03.1977, the Additional Deputy Commissioner, Singhbhum, decreed the Suit in accordance with the award of the majority members of the Panchayat, and held as follows:

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- A “I therefore come to the conclusion that the suit lands have been wrongly recorded in the names of the defendants during the recent survey and settlement operation. The survey authorities have not considered the documents which were in favour of the plaintiffs.
- B When the plaintiffs come in possession of the suit lands after the demarcation on 5.10.20 by Kolai Ho, Amin no actions were taken by the defendant no. 1 and the father of defendant no. 2 to go in appeal against the demarcation. They also did not go in appeal against the orders of mutation, of correction of Zamanbandi passed in case no. 1139/20-21. Therefore whatever orders have been passed in Civil case no. 166-13, 893-14-15, 670/20-21 and 1139/20-21 still hold good because they have not been either set aside or modified by any competent court. After the plaintiffs came in possession of the suit lands in the year 1921 thereafter there has been no evidence on record to show that the plaintiffs were ever dispossessed by the defendant no. 1 and defendant no. 2 or his father. It is therefore presumed that the plaintiffs are still continuing in possession of the suit land.
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- E There is definite documentary evidences is in favour of the plaintiffs to prove their right title and interest over the suit lands. There is also evidence that they are in possession of the suit lands since 1921. Under the circumstances discussed above, the award of the two punches namely Harish Chandra Deogam and Dogor Deogam is accepted and for the reasons stated above the award of the minority punch is set aside because he has relied more upon the papers and documents which are of lessor value.
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- G In the result the suit of the plaintiffs is decreed in their favour. They have a valid right, title and interest over the suit lands and before their possession over the suit land is confirmed. It is also hereby declared that the entries in the names of the defendants in respect of the such lands in respect of rights finally published in the year 1963 is wrong and erroneous.”
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5. By an order dated 06.08.1979, the appellate authority viz., the Commissioner, dismissed the appeal filed by the appellants by holding: A

“In the course of hearing, the learned lawyer for the appellants argued that the learned Additional Deputy Commissioner went beyond the award of the majority punches to confirm the possession of the respondents over the suit land which was wrong as the decree must be in conformity with the award and anything beyond it is ultra-virus. He also questioned the award of the majority punches. B

Under Wilkinson's rules the acceptance of the award of the majority punches is mandatory unless the charges of corruption have been proved or unless the award is contrary to the custom of the Hos. In the present case neither has been done. Therefore, that part of the Additional Deputy Commissioner's order which is in conformity with the award of the majority punches is up held. He has also given reasons why he held erroneous the entries in the records prepared during the recent survey as mentioned above, and has concluded that the respondent have been in possession of the land since 1921. C D

I, therefore, see no reason to interfere with the order. The appeal is dismissed.” E

6. The learned Single Judge, by his judgment dated 04.02.2000, dismissed the writ petition filed by the appellants herein, holding as follows: F

“On consideration of the reliefs claimed, I do not find that the cognizance taken of the suit by the respondents no. 2 and 3 was without jurisdiction when the title has been clouded between the parties on wrong entry in the record of rights. Moreover, the party has got every right to go for a suit for declaration of title and confirmation of possession. Thus on this score, there is no force in the writ petition. G

The second point urged by Mr. Khatri is that the suit was hopelessly barred by limitation as Munda Jamabandi prepared in the year 1918 and also in 1963 cannot be challenged in the year 1970 when the same is totally barred by limitation as contemplated under Rule 3 of the Rules. Suit had been filed for declaration of right, title and interest over the suit land and the cause of action H

- A for the suit was due to trouble being created by the defendants as there was wrong entry in the record of rights. It appears that the record of rights were definitely wrongly prepared giving go-by to the decision arrived at earlier by the Kolhan Superintendent already mentioned above and the tile and possession of the plaintiffs had already been established long back in the year 1914-15, but the revenue records were not corrected accordingly and this have a handle to the defendants to create trouble about the possession and title of the plaintiffs and then the plaintiffs have no other alternative but to come in the suit. I do not find that in the circumstances of the case, Rule 3 of the Wilkinson's Rule would create a bar in coming up for declaration of the title over the suit land. Moreover, it is an established principle of law that majority of the award should be accepted unless it can be shown that the same suffers from the procedural defect as contemplated under Rule 20 of the Wilkinson's Rules or that the same is devoid of consideration of the customs prevailing amongst troubles. There was no plea of misconduct against the majority members who gave their award in favour of the plaintiffs. This aspect has been considered when objection was raised against the award by both the courts below and came to the concurrent findings. There is no scope of this court to interfere with such concurrent findings unless the same suffers from jurisdictional error or error apparent on the face of it. It appears from the perusal of both the judgments as contained in Annexures 4 and 5 that both the respondents no. 3 and 2 had taken much pain and gone in depth into the cases of the parties and the decision arrived at by the majority award and then accepted the award rejecting the objections raised from the side of the petitioners. Thus, the points raised in this writ petition have got no force.
- E In the result, this writ petition is dismissed, but in the facts and circumstances of the case, no order as to costs.”
- G 7. An appeal filed from this order was dismissed by the Division Bench vide impugned order dated 27.07.2000 holding as follows:
- H “We have heard learned counsel for the appellant and perused the order under challenge. The findings recorded by the learned single judge are based upon correct appraisal of evidence on

record and as such, we are not inclined to interfere with the same. Accordingly, this Letters Patent Appeal is dismissed. A

8. In view of the fact that it is only half the property which went to the plaintiffs, as referred to in paragraph 3 of the plaint, that was the subject matter of the Suit, the decree will have to be set aside to the extent that it awards anything beyond this. B

9. Also, we have been taken through the Bihar Kolhan Civil Justice (Regulating and Validating) Act, 1978. Section 2 states as follows:

“2. Regulation and Validation of certain past action in the Kolhan with the exception of Chaibassa Municipality in the Sadar Subdivision of the District of Singhbhum.-(1) Notwithstanding anything contained in any other law for the time being in force any judgment, decree or order of any Court, the officers mentioned in Column 1 of the Schedule shall, in regard to the trial of civil suits and proceedings arising within the local limits of the Kolhan with the exception of the areas comprised within the Municipality of Chaibassa in the Sadar Sub-division of the District of Singhbhum and hearing of appeals or petitions for review or revision arising therefrom, be deemed to have validly exercised the powers which the officers, mentioned in the corresponding entries in Column 2 thereof exercised under the Wilkinson's rule and under Regulation XIII of 1838, and no order, judgment or decree passed by them shall be deemed to be invalid or shall be called in question in any Court or proceeding whatsoever merely on the ground that they were not so empowered. C  
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(2) Where any judgment, decree or order in any appeal or proceeding has been set aside by any Court merely on the ground that the said officer had no power or authority to Act under the said Rule, the Court which set aside the judgment, decree or order shall on an application made to it within six months from the date of the commencement of this Act shall set aside its previous order and shall proceed to hear the suit, appeal or proceeding again and in case there has been any order for remand on such ground all subsequent proceedings after the remand shall be deemed to have terminated.” G  
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A            10. In view of this section as well, which admittedly has not been challenged by the appellants before us, it is difficult at this point of time to set aside the concurrent judgments which were made on the basis of application of Wilkinson's Rules.

              The appeal stands disposed of accordingly.

Kalpana K. Tripathy

Appeal disposed of.