

Jharkhand High Court

Somay Mardi And Ors. vs Bikram Murmu And Ors. on 15 May, 2007

Equivalent citations: 2008 (1) JCR 112 Jhr

Author: M Eqbal

Bench: M Eqbal

JUDGMENT M.Y. Eqbal, J.

1. This second appeal by the defendants-appellants is against the judgment and decree dated 17.5.1990 passed by 2nd Additional District Judge, Jamshedpur in Title Appeal No. 20 of 1985 whereby he has reversed the judgment and decree dated 22.8.1985 passed by 2nd Additional Subordinate Judge, Jamshedpur in Title Suit No. 9 of 1982 and thereby decreed the suit.

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

The plaintiffs tiled the aforementioned suit for declaration of title and confirmation of possession and in the alternative, recovery of possession of the suit land described in Schedule A of the plaint which consists of various plots of khata No. 66 of Mauza Digha, P.S. Ghatshila, District Singhbhum comprising an area of 4.12 acres. The plaintiffs also sought a decree for declaration that the sale deed executed by Most. Budhni in favour of the defendants is void, illegal and inoperative. The suit property originally belonged to late Karu Santhal. Late Aina Santhalin was the wife of late Karu Santhal. Out of the wedlock of Karu Santhal and Aina Santhalin, a daughter, Most. Budhni, was born. After the death of Karu Santhal, his widow Aina Santhalin re-married with Bikram Santhal, brother of Karu Santhal and out of this wedlock, the plaintiff was born.

3. In the year 1944, Aina Santhalin, as wife of Bikram Santhal, transferred the suit property left by Karu Santhal treating the said property as her property in the name of her son-plaintiff. Plaintiffs further case is that some time in 1946, Most. Budhni, daughter of Karu Santhal, filed a Title Suit being Title Suit No. 224 of 1946 which was eventually compromised. Most. Budhni, in her turn, sold the suit property to the defendant in the year 1977. Thereafter, a proceeding under Section 145, CrPC was initiated which was decided against the plaintiff. Hence, the plaintiff filed the suit for declaration of title and confirmation of possession, etc.

4. The defendant-appellant contested the suit by filing written statement denying and disputing each and every allegation made by the plaintiff in the plaint. The defendant denied the allegation that Most. Aina sold the suit land in favour of the plaintiff for legal necessity and delivered possession of the same. The defendant also denied the allegation that the plaintiff has been paying rent in respect of the suit land.

5. The case of the defendants is that after the Hieth of Karu Santhal which took place sometimes in the year, 1920, his widow, Aina remarried with Bikram Santhal and Most. Budhni, being the only daughter of Karu Santhal, came in possession of the property and all along remained in possession as an absolute owner. In 1977 Most. Budhni sold the suit land after obtaining permission from the competent authority. The defendants also denied the allegation of the plaintiff that he came to know about the transfer of the suit land in 1978 only when a proceeding under Section 144/145 CrPC was

initiated.

6. The trial Court formulated the following issues for consideration:

(1) Is the suit as framed maintainable?

(2) Has the plaintiff got a valid cause of action for the suit?

(3) Is the suit barred by law of limitation, waiver, estoppel and acquiescence?

(4) Whether the suit lands are in possession of the plaintiff or the defendants?

(5) Is the plaintiff entitled to a decree for declaration of title and confirmation of possession or in the alternative for recovery of possession over the suit lands?

(6) Whether the alleged purchased by the defendant from Budhni was for legal necessity?

(7) Whether the terms of compromise of Title Suit No. 24 of 1946 of the Court of Munsif, Jamshedpur, is binding on the plaintiff and acted upon by the parties to that suit?

7. The trial Court, while deciding issue No. 4, recorded a conclusive finding that the defendants all along remained in possession of the suit land. The trial Court further recorded a finding that Most. Budhni sold the suit land after obtaining permission of the competent authority as required under Section 46 of the Chotanagpur Tenancy Act (shortly CNT Act. Accordingly, the trial Court dismissed the suit.

8. The appellate Court reversed the judgment and decree passed by the trial Court. In paragraphs 1 to 9 of the judgment, the appellate Court recorded the submissions made by the learned counsels for the parties. The finding recorded by the appellate Court will appear in paras 10 and 11 of the judgment which reads as under:

10. Perused the learned auth. It is submitted by the learned lawyer for the appellant that this point is not under dispute and both the parties admit that the parties to the suit and for that matter Budhni being tribal were Hinduised and they were governed by the Hindu Law in the matter of successions and inheritance but it is also pointed out that Hindu Succession Act not being applicable to the Schedule Caste as per Section 2(11) of the Act, so the provision of old Hindu Law prior to 1956 would be applicable and in that case Hindu female had limited ownership over the property inherited by them and they could have alienate or sold the properties only for legal necessity and for meeting their legal necessity. There is no evidence on record whatsoever that Budhni has any legal necessity to the extent that she was compelled to sale the entire suit land measuring more than four acres cultivable including her dwelling house to the defendant/respondent and defendant have made enquiry about the legal necessity of his vendor Budhni and it is, therefore, it is submitted that Budhni could not have transferred better title to the defendant that she had herself under the law and accordingly the aforesaid sale deed (Ext. A) through which the defendant-responent claims his

title over the suit land was void and illegal and this point was also not properly appreciated by the learned lower Court. I agree to this contention made on behalf of the learned lawyer for the appellant and this point could not be controverted by the respondent. So far the plea of stridhana taken on his behalf is certainly a new plea being taken at the time of hearing of the appeal and that can not be considered at this stage.

11. In the result, I find that the findings given by the learned lower Court that the aforesaid sale of suit land vide Ext. A was for legal necessity of Budhni can not be sustained and the sale deed is declared to be void and illegal and inoperative. Accordingly, the impugned judgment and decree is set aside and this appeal succeeds on contest. However, there will be no order so as to cost.

9. At the very outset I would like to point out that the appellate Court has not discussed at all the evidence of the witnesses examined by the parties. The appellate Court only recorded the submission made by the learned Counsel for the parties and referred a decision of the Supreme Court to show that a Hindu widow has no right to sell the property.

10. The admitted fact is that Most. Aina, after the death of her husband, Karu Santhal, remarried with Bikaram Santhal and out of their wedlock a son, the plaintiff was born. In 1944 Most. Aina, who did not remain widow of Karu Santhal, sold the suit property belonging to Karu Santhal in favour of her son (the plaintiff) from her second husband. On the basis of that transfer the plaintiff is claiming title over the suit land. Curiously enough even the sale deed by which Most. Aina transferred the property belonging to Karu Santhal, in favour of her son, the plaintiff, was although produced but not proved in the Court. The plaintiff even did not produce single chit of paper in support of his case that after transfer he came in possession of the suit land. On the contrary, after the death of Karu Santhal, his daughter, Most. Budhni, came in possession of the suit land and continued possession till 1977 when she sold the suit land in favour of the defendant after obtaining permission from the competent authority as required under Section 46 of the CNT Act. Not only that in 1964 survey record of right was prepared and Most. Budhni was recorded as raiyat in respect of the suit land in the survey record of right finally published under the Act. The plaintiff never challenged the said record of right prepared in the name of Most. Budhni at any point of time. After transfer of the suit land in favour of the defendant in the year 1977, the names of defendants were mutated and the defendants have been paying all rent and taxes in their own names to the State of Bihar, now State of Jharkhand. Ignoring all these facts the appellate Court reversed the finding of the trial Court on extraneous consideration. The appellate Court has neither discussed the evidence of the witnesses nor the finding recorded by it is based on any admitted and/or proved facts. In my considered opinion, therefore, the judgment and decree passed by the appellate Court is erroneous and absolutely perverse in law.

11. For the aforesaid reason, this appeal is allowed and the judgment and decree by the appellate Court is set aside and that of the trial Court is restored. Consequently it is held that the suit filed by the plaintiff-respondent has been rightly dismissed by the trial Court.