

Jharkhand High Court

Mahesh Ganjhu And Ors. vs Gopal Ram Ganjhu And Ors. on 19 June, 2007

Equivalent citations: AIR 2008 Jhar 2, 2007 (3) JCR 657 Jhr

Author: M Eqbal

Bench: M Eqbal

JUDGMENT M.Y. Eqbal, J.

1. This appeal by the plaintiff/appellants is directed against the judgment and decree dated 2.1.1990 passed by the 3rd Additional Judicial Commissioner, Ranchi in Title Appeal No. 41/1986 whereby he has reversed the judgment and decree dated 23.4.1986 passed by Additional Subordinate Judge, Ranchi in Title Suit No. 89/1978.

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

Plaintiff/appellants filed the aforementioned suit for declaration of title and recovery of possession with respect to the suit land bearing khata No. 398 situated at Mauza Khunti and khata No. 6 of village Kusum Toll, Khunti, Plaintiffs' case is that they are the descendants of Bhola Ganjhu whose name was recorded in Revisional Survey records of right. The suit land are the bakast land of Bhola Ganjhu. The defendants except defendant No. 20 are the descendants of Dhuru Ram Ganjhu and Ganjhu Ram Ganjhu, whereas defendant No. 20 is stranger to the family. It was further alleged that Chamru Ganjhu father of the Bhola Ganjhu executed a mortgage deed of his bakast land on 28.3.1919 in favour of Dhuru Ram Ganjhu and Ganjhu Ram Ganjhu. In spite of mortgage deed, plaintiffs alleged to have remained in cultivating possession of the suit land. In the Revisional Survey the name of Zerpeshgidar was recorded in the remark column. Plaintiffs' further case is that in 1937-38 money decree was passed against the plaintiffs and in execution of that money decree, all the lands of the plaintiffs were put in auction. Therefore, in order to avoid auction sale of the lands plaintiffs executed a deed of settlement in favour of the defendants. Plaintiffs' case is that such deed of settlement was executed by that was farzi document created only to defraud the decree-holder. The deed of settlement was never acted upon and it remained all along in the custody of the plaintiffs. Thereafter, mortgage deed was redeemed by the plaintiffs and accordingly plaintiffs remained in possession. Since zamindari was vested in 1956, plaintiffs and their ancestors who were intermediaries submitted return to the State of Bihar. As the lands were in their possession, rent was fixed in their favour and Form 'M' was granted to them. Plaintiffs therefore, pleaded that they became the raiyat under the State of Bihar. Plaintiffs' further case is that in 1970 when defendants raised dispute with regard to possession, a proceeding under Section 144, Cr PC was initiated, which was converted into a proceeding under Section 145, Cr PC. The Executive Magistrate referred the matter to the Court of Munsif, Khunti, who by order dated 2.5.1975 found that possession of the defendants over the suit land. According to the plaintiffs, order passed by the Munsif is perverse in law. Plaintiffs' therefore filed the instant suit.

3. Defendants filed their written statement and contested the suit denying and disputing the case of the plaintiffs and stating inter alia that since the date of mortgage and settlement, they remain in continuous possession of the suit land.

4. The trial Court decreed the suit and against the said decree, the defendants preferred appeal which was finally heard by Additional Judicial Commissioner, Ranchi who eventually allowed the appeal and set aside the judgment and decree passed by the trial Court.

5. I have heard Mr. L.K. Lal, learned Counsel appearing for the appellants and Mr. P.K. Prasad, learned Counsel appearing for the respondents and I have also perused the judgment and decree passed by the trial Court and the appellate Court.

6. The trial Court framed the following six issues:

(1) Is the suit as framed maintainable?

(2) Have the plaintiffs got cause of action to sue?

(3) Is the suit barred by law of limitation?

(4) Whether the deed of settlement dated 29.11.1938 was a farzi transaction or a genuine and valid document which was acted upon?

(5) Whether the plaintiffs have got title to and possession over the suit land or the suit land is in possession of the defendants adverse to the interest of the plaintiffs?

Whether the plaintiffs are entitled to any other relief?

7. Since issue Nos. 4 and 5 are the main issues they were taken together by the trial Court and categorical finding was recorded by the trial Court that deed of settlement was for consideration and it was not a farzi document. The trial Court further held that right title and interest of the suit land was transferred in favour of the defendants. In spite of the aforesaid finding, the trial Court decreed the suit holding that plaintiffs having remained in continuous possession of the suit land perfected their title by adverse possession. Accordingly the suit was decreed.

8. The appellate Court after re-appreciation of the entire evidence reversed the finding of the trial Court with regard to possession and held that the defendants remained in possession of the suit land at all point of time and the finding of adverse possession in favour of the plaintiffs is perverse in law.

9. Admittedly, in the year 1919 the suit land was mortgaged in favour of the ancestors of the defendants by way of usufructuary mortgage which means possession of the suit land was delivered to the defendants. In the year 1938 again deed of settlement was executed in favour of the defendants. According to the plaintiffs, deed of settlement was farzi transaction and possession of the land was not delivered to the defendants. The trial Court held that the deed of settlement was valid and genuine document and it was not a farzi transaction. Against the said finding the plaintiffs did not preferred any appeal or cross-objection. Thereafter, in the year 1970, a proceeding under Sections 144-145, Cr PC was started and the matter was referred to the civil Court for adjudication with regard to possession. The civil Court decided possession of the defendants over the suit land.

Inspite of all these evidences, the trial Court erroneously held that plaintiffs perfected their title by adverse possession, that too without framing any issue of adverse possession. In my considered opinion, therefore, the appellate Court rightly reversed the finding of the trial Court. I, therefore, do not find any substantial question of law is involved in this appeal.

10. For the aforesaid reasons there is no merit in the instant appeal, which is, accordingly, dismissed.