

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 3 of 2024

Paitar Mandal, s/o late Santu Mandal, aged about 59 years, resident of village Gardi, PO and PS Jarmundi, subdivision and District Dumka, Jharkhand-814141 **Appellant/Plaintiff**

Versus

1.The State of Jharkhand through Collector, PO and PS Dumka, District Dumka

2.The Collector, Dumka having office at New Collectorate Building, Dumka, PO and PS Dumka, District Dumka, Jharkhand

3.Sub-Divisional Officer, Dumka having office at New Collectorate Building, Dumka, PO and PS Dumka, District Dumka, Jharkhand

4.Circle Officer, Jarmundi, PO and PS Jarmundi, Subdivision and District Dumka, Jharkhand

5.LAMPS Secretary, Jarmundi, PO and PS Jarmundi, Subdivision and District Dumka, Jharkhand

6.Block Co-operative Officer, Jarmundi, PO and PS Jarmundi, Subdivision and District Dumka Jharkhand **Respondents/Defendants**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

For the Appellant : Mr. Kumar Nischay, Advocate

For the State : Mr. Krishna Kumar Bhatt, AC to SC-I

Order No.5/ Dated: 12th April 2024

In this Second Appeal, the appellant seeks to challenge the judgment dated 27th July 2023 and decree dated 14th August 2023 passed in Civil Appeal No. 15 of 2016 whereby the Title Suit No. 166 of 2007 filed by him was dismissed.

2. The appellant was plaintiff in Title Suit No. 166 of 2007 which was instituted by him for a declaration as regards his valid and subsisting title and the confirmation of possession over the subject land, measuring about 0.12 decimals in plot no. 757 and another piece of land measuring about 0.40 decimals in plot no.428 in J.B No. 1 at village Gardi within Jarmundi PS in the district of Dumka.

3. The suit was dismissed by judgment dated 15th March 2015 and the appeal preferred by the plaintiff has also been dismissed by the judgment rendered on 27th July 2023 in Civil Appeal No. 15 of 2016.

4. In Title Suit No. 166 of 2007, the following issues were framed by the trial Judge:

- I. Is the suit maintainable in its present form ?
- II. Has the plaintiff valid cause of action for the present suit ?
- III. Has the plaintiff acquired valid right, title, interest upon the suit land ?
- IV. Is the plaintiff in possession of the suit land ?
- V. Has the plaintiff acquired valid right, title, interest by way of adverse possession ?
- VI. Is the suit land a public land/govt. land ?
- VII. Is the plaintiff entitled to the claimed reliefs/relief ?
- VIII. To what other relief or reliefs the plaintiff is entitled to ?

5. The plaintiff in support of his claim examined nine witnesses and produced rent receipts vide Ext. 1 to 1/C, Nazir receipt vide Ext. 2, map vide Ext. 3, postal registry receipts vide Ext. 4 to 4/C, correction slip vide Ext. 5 and, the information under RTI vide Ext. 6. However, the defendants did not adduce any oral or documentary evidence.

6. The trial Judge recorded a finding that the Hukumnana granted in favor of the plaintiff's mother in the year 1952 did not confer any right, title and interest over the subject land. The trial Judge held that after the vesting of the land in the State by operation of the provisions under Bihar Land Reforms Act, 1950 the landlord was divested of his powers to settle any raiyati land. The trial Judge held as under:

"9. In the instant suit plaintiff has claimed the said land on the basis that it was settled to his mother by the then landlord through Hukumnama and after vesting of the zamindari the Ex-landlord had filed return also, but there is no any proof available on record that through Hukumnama land was settled to the mother of plaintiff. Plaintiff has also not filed any documents to prove his pleadings that return was failed by the zamindar in which name of his mother was mentioned as raiyat.

Plaintiff has stated in his plaint in para 5 that Hukumnama was granted to his mother by then landlord in the year 1952, but as per sec.4 of Bihar Land Reforms Act, 1950 all estates on tenure including the interest of proprietor as tenure holders has been vested in the State free from all encumbrances. Bihar Land Reforms Act 1950 came into force on dated 23.09.1950, hence after 23.09.1950 no landlord can settle any land to any raiyat. Plaintiff has stated in para 6 that plot no. 757 appertaining to J.B. No. 1 of mouza Gardi measuring an area of 1 acre stands recorded as pradhani jote plaintiff's witness have also stated in his evidence that suit land is pradhani jote and son of Katki Madaiya is village

Pradhan. If it was pradhani jote then landlord cannot settle the land to any person.

Moreso after vesting of jamindari in year 1950 in state landlord ceased to settle the land and if so done by ex landlord then it is illegal.

Although plaintiff has filed same rent receipts, but it belongs to another jamabandi and it does not belongs to J.B. No. 1 plot no. 757 and 428. Apart from rent receipts are not proof of title.”

7. In Civil Appeal No. 15 of 2016, the lower appellant Court formulated the following four points for determination :

1. Point for determination no. 1 – whether the plaintiffs has got a valid right, title and interest over the suit land ?
2. Point for determination no. 2 – whether plaintiff has acquired any right, title and interest over suit land by virtue of adverse possession/ prescription ?
3. Point for determination No. 3 – whether the judgment and decree passed by the learned court of Sr. Civil Judge-I, Dumka under appeal require any interference by this court or not ?

8. As to whether the plaintiff acquired any right, title and interest through adverse possession, the lower appellate Court held that the claim for title through adverse possession can be established only by producing evidence as to demonstrate that the plaintiff was in possession of the suit land without force, without secrecy and without permission from the original landlord. The lower Appellate Court held as under:

“13. Point for determination no. 2 – It has been originally pleaded by plaintiff in their plaint that he has acquired right, title and interest over the suit land on the basis of grant of Hukumnama/Amalajama by the then Jamindar Kamladhari Lal in favour of his mother and he has also pleaded that even otherwise he has derived right, title and interest over the suit land on the basis of continuous undisturbed possession of the suit land firstly by her mother since 1952 and thereafter by him and his family members.

In this regard I find firstly that since the plaintiff has claimed right, title and interest over the suit land by virtue of Hukumnama/Amlajama granted in favour of his mother by Ex-landlord i.e. to say that his claim of title over the suit land is on the basis of a settled deed. Therefore, he cannot be allowed to take a contrary plea, of adverse possession, which itself is based on the basic presumption title of the suit land belongs to another person and not to himself. It is settled principle of law that “no one can be allowed to blow hot and cold in the same breath”. Therefore, the plaintiff could either have claimed his right, title and interest over the suit land on the basis of a document i.e. Hukumnama/Amlanama issued/settled in his favour by the landlord Kamaldhari Lal or alternatively he could have claim title over the

suit land purely on the basis of adverse possession, admitting title of the government, as is the case herein, against which he claims adverse possession. I also find that claim of adverse possession of the plaintiffs is not maintainable in this case in order to also because that establishing adverse possession the plaintiff prove “Neck-vi-neck claim-neck precario” i.e to say “the plaintiff must establish possession of the suit land without force without secrecy and without permission against interest of the original land lord”. Further for establishing adverse possession one has to plead and prove exact date of commencement of his adverse openly, against the landlord, under knowledge of the whole worth and against the true owner of the land in question. However, I find that in the instant case neither there is such pleading regarding adverse possession in the plaint of the plaintiff let alone any proof either oral or documentary on record in this regard.

Hence upon considering all the above facts, circumstances and Law Juxtaposed thereto I find that the plaintiff has not been able to establish or prove his claim of right, a title interest or possession of the suit land by virtue of adverse possession.

Hence this point for determination is decided against the plaintiff/appellant and in favour of the defendant respondent.”

9. To challenge the finding recorded by the Court’s below that the plaintiff could not establish that he perfected title through adverse possession, the following substantial questions of law have been formulated in this Second Appeal:

- i. Whether the landlord is empowered to settle a land of a mouza which has been declared as Khas ?
- ii. Whether the findings of the Ld. Trial Court and Ld. Appellate Courts are “DEHORS” ?
- iii. Whether the Ld. Trial Court and Ld. Appellate Court have erred in not deciding the issue of adverse possession meticulously ?
- iv. Whether the plaintiff can claim his right, title and interest over the suit property by way of adverse possession ?

10. Under section 100 of the Code of Civil Procedure, the Court may formulate any substantial question of law which arises between the parties even though the same has not been formulated in the memorandum of Second Appeal. Having regard to the concurrent findings of fact recorded by the Court’s below, this Court finds that no substantial questions of law arises between the parties. The plaintiff did not aver and establish the date since when he was in possession over the suit property hostile to the title of the landlord. To claim title through prescription, the plaintiff is required to demonstrate that 12 years in the past this fact was brought to the knowledge of the landlord that he was exercising ownership

rights hostile to the right of the owner. No such date has been disclosed by the plaintiff either in the pleadings or in the evidence laid in the trial of the Title Suit No. 166 of 2007. The findings recorded by the Courts below are based on proper appreciation of the materials on record. On such findings, not even a question of law arises in this case.

11. Second Appeal No. 3 of 2024 is dismissed.

(Shree Chandrashekhar, A.C.J.)

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