IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 1 of 2024

Khemlali Sao, aged about 50 years, son of Sukar Nayak, resident of Village Tirla, P.O.- Hesla, P.S- Bagodar, District- Giridih **... … Appellant**

Versus

Most. Sohagi Devi, wife of Late Luxman Sao, resident of Village Tirla, P.O.- Hesla, P.S.- Bagodar, District- Giridih **… ... Respondent**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

For the Appellant : Mr. P. K. Mukhopadhyay, Advocate
Mr. S. K. Murtty, Advocate

Order No. 5/Dated: 12th April 2024

This Second Appeal has been preferred by the defendant in T.S No. 90 of 2009.

2. T.S No. 90 of 2009 was instituted by Most. Sohagi Devi for a declaration of her right, title and interest over a piece of land measuring 12½ decimals of land out of 31½ decimals of land comprised in Plot No. 3379 under Khata No. 42; described under Schedule-B. The suit was decreed vide judgment dated 26th March 2018 and a decree thereon was prepared on 9th April 2018.

3. The judgment and decree in T.S No. 90 of 2009 were put to challenge by the appellant in Civil Appeal No. 39 of 2018 and that has been dismissed by a judgment dated 29th September 2023 and decree thereon was prepared on 18th October 2023.

4. In T.S No. 90 of 2009, the plaintiff who is the respondent herein pleaded that there was an amicable partition of the property measuring about 9 acres spread across different plots in Khata No. 42 of Khewat No. 2 at village Tirla within Bagodar PS in the district of Giridih. Tula Teli had four sons, namely, Rupwa Teli, Somar Teli, Budhna Teli and Kaila Teli and on partition of the aforementioned lands their names were recorded in *Kabjawari* as to their shares in land. This was the case set up by the respondent that 63 decimals land in Plot No. 3379 came in share of Rupwa

Teli who died living behind his two sons, namely, Bhade Teli and Luxman Teli. She also pleaded that Bhade Teli also died leaving behind one son, namely, Jagan Nayak, and Luxman Teli died leaving behind two sons, namely, Narayan Sao and Suresh Sao. According to her, Jagan Nayak sold 1.03 acres land in Khata No. 42, Khewat No.2 through a sale deed dated 18th April 1987 to her. The respondent further claimed that she came in possession over the land sold to her by Jagan Nayak and has been paying rent after her name was mutated in the revenue record by virtue of the order passed by the Circle Officer at Bagodar. On the other hand, the appellant claimed that the subject property was partitioned around the year 1930 and Luxman Teli who was the husband of the respondent himself sold 30 decimals land in Plot No. 3379 to Most. Panwa, who is the mother of appellant through registered sale deed dated 11th November 1994. This was the case set up by the appellant that Luxman Teli sold 13 decimals of land in Plot No. 3379 to him and his brothers, namely, Chintaman Sao and Mahendra Sao through registered sale deed dated 10th June 1996.

5. On the basis of the pleadings of the parties, the trial Judge framed the following issues for determination:

> "I. Is the suit maintainable in its present form?
> II. Is there cause of action for this suit?
> III. Is the suit hit by the principles of waiver, estoppels and acquiescence?
> IV. Is the suit barred by law of limitation and adverse possession?
> V. Is the suit bad for non joinder of necessary party?
> VI. Whether the plaintiff has got valid right, title, interest and possession over the suit land?
> VII. To what other relief or reliefs the plaintiff is entitled to?"

6. In support of the plaint averment and for seeking the relief as mentioned hereinabove, the respondent examined four witnesses and laid in evidence original sale deed dated 18th April 1987 vide Exhibit-1 and the rent receipts vide Exhibits-2, 2/A and 2/B. The appellant examined five witnesses and produced documentary evidence, such as, certified copy of sale deed no. 10679 of 1994 dated 11th November 1994 vide Exhibit-A and certified copy of the sale deed no. 4917 of 1996 dated 10th June 1996 vide

Exhibit A/1.

7. On a consideration of the materials on record, the trial Judge vide judgment dated 26th March 2018 held that the plaintiff has acquired right, title and interest over the suit property and allowed T.S No 90 of 2009 in favor of the respondent herein. Against the judgment dated 26th March 2018, the appellant filed Civil Appeal No. 39 of 2018.

8. In the appeal, the appellate Court framed *inter alia* three issues for determination viz. (i) Has the suit Plot No.3379, Khata No. 42 area 63 decimals equally been partitioned amongst Jagan Nayak and Luxman Teli? (ii) Has the plaintiff acquired right, title and interest over the suit land as mentioned in the Schedule-B of the plaint by virtue of Registered Sale Deed No. 3370 dated 18.04.1987 executed by Jagan Nayak in favor of plaintiff ? and (iii) Is there any need to interfere with the judgment and decree of learned trial Court ?

9. The appellate Court after having considered the materials on record came to a conclusion that no interference is required with the judgment and decree in T.S No. 90 of 2009. The lower appellate Court recorded that the consideration amount for the sale deed executed by Jagan Nayak was given by the husband of the plaintiff, namely, Luxman Teli who was well aware of the execution of sale deed no. 3370 dated 18th April 1987. The lower appellate Court further found that DW1 and DW3 who claimed themselves co-purchaser of the suit land never made an application for making them a party in T.S. No. 90 of 2009 though they had knowledge about the claim made by the plaintiff. The lower appellate Court further held that the defendant never moved before any authority for cancellation of the sale deed executed in favor of the plaintiff and, moreover, could not produce any evidence to demonstrate that in respect of so-called purchase of 13 decimals of land any rent receipt was issued in his name or in the name of the co-purchasers.

10. In Civil Appeal No. 39 of 2018, the lower appellate Court held

as under:

> "Thus considering the facts, evidences and circumstances as discussed above it appears to me that according to the suggestion as given by the Ld. Counsel for the defendant to the plaintiff during her cross-examination, consideration amount of the sale deed executed by Jagan Nayak in respect to the suit land was given by Luxman Nayak, husband of the plaintiff. That means since the date of execution of Sale Deed No. 3370 dated 18.04.1987 executed by Jagan Nayak in favor of plaintiff for transfer of the half portion of the land out of the entire lands of the suit plot No. 2279, Luxman Teli was well aware about the execution of said sale deed and thereby defendant admitted that Jagan Nayak was the rightful owner of half portion (31½ decimals) of the suit Plot No. 3379 and for which at the time of execution of the sale deed in favour of the plaintiff, Luxman Nayak have not raised any objection.
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> In this context in Balu Sudam Khalde and Another vs The State of Maharastra case reported in the 2023 LiveLaw (SC) 279 it has observed and held by the Hon'ble Supreme Court that- the suggestions made to the witness by the defence Counsel and the reply of such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record and any concession or admission of a fact by a defence Counsel definitely be binding on his client, except the concession on the point of law.
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> D.W.1 and D.W.3 are the co-purchaser of the suit land and they elaborately deposed before the Court. Even thought they never prayed before the Court to be a party in the original suit. Hence it is not proper to say that the D.W.1 and D.W.3 had no knowledge about the suit and they had not got any opportunity to defend their claim.
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> Defendant never moved before the competent authority for cancellation of the sale deed of the plaintiff or for declaration of his right title over the suit land. Even there is no any document to show that after purchase of 13 decimals of land, the same was mutated in the name of the defendant or any other co-purchaser. On the other hand rent-receipts as proved on behalf of the plaintiff-respondent clearly speaks that rent-receipt for 1.03 acres of land is being issued in the name of the plaintiff, which further speaks that after purchase of 1.03 acres of land.
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> Thus considering the facts, evidences and circumstances as discussed above it appears to me that the suit land under Plot No.3379 area 63 decimals is the ancestral land of Luxman Nayak and Jagan Nayak and it is the pleadings of the plaintiff that the lands under Plot No.3379 area 63 decimals had equally been partitioned between Jagan Nayak and Luxman Nayak and each of them got 31 ½ decimals of land in their share. It is also the case of the plaintiff that the plaintiff-respondent had purchased 31½ decimals of land out of 63 decimal of Plot No.3379 allotted to Jagan Nayak vide Registered Sale deed No.3790 dated 18.04.1987 and after purchase said land along with other lands has also been mutated in the name of the plaintiff. She is also paying rent to the Government. In support of the said pleadings plaintiff proved the sale deed No.3790 dated 18.04.1987 and rent-receipts issued in the name of the plaintiff. Moreover suggestion as given by the Ld. Counsel for the defendant during the cross-examination of the plaintiff clearly speaks that said land has been purchased by the plaintiff within the knowledge of her husband Luxman Nayak and thereby Luxman Nayak admitted the share of Jagan Nayak over 31 decimals of

land out of 63 decimal of Plot No.3379, including the suit land.

In rebuttal it is the pleadings of the defendant that in partition between Badhe Teli and Luxman Teli entire 63 decimals land under Plot No. 3379 was allotted to the share of Luxman Teli and accordingly Luxman Nayak sold 30 decimals and 13 decimals of land through two registered sale deed. But the defendant or his witnesses failed to disclose the date or said partition. Even they failed to disclose the details descriptions of land allotted to the Share of Bhade Teli and Luxman Teli. Even the defendant or D.W.1 and D.W.3 failed to produce a single chit of paper to show that after the said purchase, lands as purchased by them has also been mutated in their name. Accordingly I find and hold that the defendant of this case hopelessly failed to prove the partition between Badhe Teli and Luxman Teli, rather the suggestion as given by the Ld. Counsel for the defendant during the cross-examination of the plaintiff clearly speaks that there was partition between Jagan Nayak and Luxman Nayak and Jagan Nayak got 31 ½ decimals of land out of 63 decimal of Plot No.3379 in his share.

At the same time right, title accrued by a party by virtue of sale deed cannot be taken away by executing any subsequent sale deed, specially where the executant of the subsequent sale deed or the subsequent purchaser have not knocked the door of the competent authority for cancellation of earlier sale deed by the co-sharer of the land, i.e, too where said sale deed was executed with in the knowledge of the executant of the subsequent sale deed. Accordingly I find and hold that the suit Plot No.3379, Khata No. 42 area 63 decimals has equally been partitioned amongst Jagan Nayak and Luxman Teli Hence point for determination No.(i) is decided in favour of the plaintiffs- respondents and against the appellant-defendant."

11. In this Second Appeal, the appellant has framed the following questions of law which according to Mr. P. K. Mukhopadhyay, the learned counsel for the appellant are the substantial questions of law:

"(A) Whether both the learned courts below failed to appreciate the evidence on record including the oral version of the plaintiff (P.W-4) to the effect that Luxman Teli was the owner of the disputed land along with other lands as part of share of the ancestral lands, upon which he was in possession?

(B) Whether both the learned courts below mechanically decided the suit and the appeal ignoring the fact that the appellant along with his brothers and mother purchased 0.43 acres of land under plot no. 3376, khata no. 42, mauza Tirla Giridih vide registered sale deeds dated 11.11.1994 and 10.06.1996 to the knowledge of the plaintiff and other co sharers of her husband Luxman Teli and remain in peaceful continuous possession for last 15 years onwards from 1994?

(C) Whether the suit has been filed by the plaintiff impleading only the appellant as a party defendant without impleading the mother and two other brothers of the appellant who had purchased the lands from Luxman Teli. By which, the suit suffers from non-joinder of necessary party?"

12. In *"Sir Chunilal V. Mehta and sons Ltd v. Century Spinning and Manufacturing Co. Ltd." AIR 1962 SC 1314* the Hon'ble Supreme

Court held that the proper test for determining whether the question of law involved in the case is a substantial question of law is to find out whether it is of general public importance or whether it directly and substantially affects the rights of the parties. In *"Sir Chunilal V. Mehta and sons Ltd"* the Hon'ble Supreme Court held as under:

> "6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and, substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally, settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.
> 7. Applying these tests it would be clear that the question involved in this appeal, that is, the construction of the Managing Agency agreement is not only one of law but also it is neither simple nor free from doubt. In the circumstances we have no hesitation in saying that the High Court was in error in refusing grant the appellant a certificate that appeal involves a substantial question of law. It has to be borne in mind that upon the success or the failure of the contention of the parties they stand to succeed or fall with respect to their claim for nearly 28 lakhs of rupees."

13. The questions of law formulated in the present Second Appeal are merely questions of law and not the substantial questions of law. The Hon'ble Supreme Court in *"Santosh Hazari v. Purushottam Tiwari" (2001) 3 SCC 179* held that a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law.

14. Having thus found that no substantial question of law arises in this case, Second Appeal No. 1 of 2024 is dismissed.

(Shree Chandrashekhar, A.C.J.)

Amit/Rahul
N.A.F.R