

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Second Appeal No. 86 of 2014

1. Deleted
 2. i) Sanjeeda Begam
ii) Md. Firoz
iii) Md. Tawen
iv) Md. Sadab
v) Md. Irsad
vi) Md. Ikhlaq
vii) Shanaaz Parween
viii) Ladli Khatoon
ix) Sabiha
x) Mini
xi) Pinki
 3. Md. Shamsuddin @ Sonu
 4. Md. Mohiuddin
 5. Md. Nayeemuddin
 6. Shamima Khatoon
 7. i) Md. Perwez
ii) Md. Tabrez
iii) Md. Tanweer Alam
iv) Md. Yasir
v) Rehana Khatoon
 8. Deleted
 9. Nasima Khatoon
 10. Zohra Khatoon
 11. Mustari Begum
- Appellants

Versus

1. Md. Eqbal
 2. Md. Anwar
 3. Md. Ibrar
 4. Md. Soeb
 5. Md. Shakil
 6. Md. Shiba
 7. Md. Talib
 8. Md. Abbu
 9. Md. Nanhe
 10. Farida Khatoon
 11. Lubna Khatoon
 12. i) Md. Aslam
ii) Husna Khatoon
iii) Malo Khatoon
iv) Reshu Khatoon
v) Rubi Khatoon
vi) Soni Parween
vii) Tajo Khatoon
viii) Bebi Khatoon
- Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants : M/s Niraj Kishore & Shobha Rani, Advocates

For the Respondents : M/s Rohit Roy & Tarun Mahto, Advocates

C.A.V. ON 02.07.2024

PRONOUNCED ON 19.07.2024

1. This is plaintiff's second appeal against the judgment of affirmance.
2. Plaintiff filed the suit for adjudication of right, title and interest and for delivery of Khas possession of the suit property as detailed in the schedule.
3. Parties shall be referred to by their original placement and will include their heirs and legal representatives substituted at different stages.

CASE OF PLAINTIFF

4. Suit property is detailed in the schedule of the plaint, as partly pucca and kachha house and structures over plot no.1393 corresponding to R.S Plot no.39 District-Ranchi measuring 13 decimals. M.S Plot no.1393 is contiguous to plot no.1397 and the two plots jointly comprise a campus denoted as Holding no.422. There are two houses in the said holding one is on plot no.1393 and another is on 1397. Ingress and egress to plot no.1393 is through 1397 and there is no other alternative passage. Passage through plot no.1397 was purchased by Fateh Mohammed through registered sale deed no.8396 of 1953.
5. Plaintiffs claim title through Fateh Mohammad, husband of plaintiff no.1 and father of plaintiffs no.2-11, who on his part acquired the land in suit by virtue of *Hukumnama* dated 07.01.1950 granted by ex-landlord Maharaja, Chota Nagpur Estate and after his death the plaintiff has succeeded to the property. After vesting of the intermediary rights, said Fateh Mohammad was found to be in possession of the land and accepted as raiyat, rent was accepted and rent receipts were issued.
6. Defendants are legal representatives of one Mana Mian @ Manu Mian @ Noor Mohammad, who was younger brother of Fateh Mohammad and was allowed possession as licensee in the house constructed on plot no.1393.
7. Proceedings under Section 71A was initiated against Fateh Mohammad, which was finally decided in his favour. In the said

proceedings Mana Mian supported the title of Fateh Mohammad. Leave and licence of Mana Mian was determined on 23rd December 2003.

CASE OF DEFENDANT

8. Case of the defendants is that owner of the property namely Suleman Kristan son of Dudu Oraon and Abhiram Oraon transferred the said land in 1950 to Gulam Mohammad @ Gule Mian. There are two distinct plots being 1393 and 1397 in the same campus on which two independent houses were constructed.

9. House standing on plot no.1393 was constructed by Gulam Mohammad sometime in the year 1950-51 and since then has been residing there. Assertions regarding leave and licence have been denied by the Defendants. The defendants are the heirs and successors of the Gulam Mohammad.

10. A proceeding was initiated under Section 71A of Scheduled Area Regulation Act on an application of Suleman Tirkey. The said case was registered as Miscellaneous Case No. 72/72. The restoration application was rejected by Sub-Divisional Magistrate impleading the four brothers namely Fateh Mohammad, Wasi Mohammad, Gulam Mohammad and Noor Mohammad @ Mana Mian. Later, another petition was filed under Section 71A of Scheduled Area Regulation Act, which was also rejected.

11. On the basis of the pleadings of the parties, following main issues were framed.

Issue No. V- Whether Suleman Christan and Abhiram Oraon sold and transferred the Plot No. 1393 corresponding to R.S. Plot No. 65 to Gul Mohammad @ Gule Mian in 1950 and since then he is still in possession of the suit property?

Issue No.VI- Whether the house standing on Plot No. 1393 was constructed by Gule Mian in 1950-51 and since then has been residing there?

12. Learned Trial Court has decided both these issues against the plaintiffs and the suit was dismissed. It was inter alia held that plaintiff had not claimed any declaration of title which was hotly contested by the

defendants. Therefore, without seeking relief of title, claim for possession was hit by Section 34 of the Specific Relief Act.

13. Defendants produced document of title being sale deed no. Ext F by which Gulam Mohammad purchased it from Suleman Christian. Claim over the suit land by the plaintiff was turned down for the reason that the settlement had not been made for agricultural purpose but for homestead, which was required to be registered mandatorily, as Section 117 of the Transfer of Property Act, applied in case of agricultural lease only.

14. Further, in the proceeding under Section 71 A the claim over the land on the basis of Hukumnama was not made and was made for the first time in suit.

15. The judgment of trial Court has been affirmed in first appeal.

16. This second appeal has been admitted to be heard on the following substantial questions of law:-

- I. – *Whether the court below has erroneously discarded the Hukumnama (Ext.-3) dated 7.1.1950, which is 30 years old document, moreso when it is followed by zamindari receipt and continuous rent receipt issued by the State Government?*
- II. - *Whether the court below has failed to take into consideration the effect of the document and legality of it, which is more than 30 years old?*

17. It is argued by learned counsel for the plaintiffs that the basis of title is *Hukumnama* executed on 07.01.1950 by the ex-landlord which has been marked as Ext. 3 and rent receipts were issued by the landlord which has been marked as Ext. 4 and 4/1. After vesting, in 1988-89 the name of the appellant was mutated and his name was entered into Register-II by the order passed in Mutation Case No. 827 R 27/1988-89 dated 29.09.1988 (Ext.7). Pursuant to the order of mutation, plaintiff was accepted as a tenant and rent receipts were issued which have been adduced into evidence and marked as Ext. 8 which was issued on 01.12.1998 with respect to Plot No. 39 in the name Fatch Mohammad of area 19 decimals.

18. SAR Case No. 72/1989-90 dated 20.09.1995 under Section 71A of the CNT Act was instituted by one Martin Tirkey for the suit property which was dismissed by SAR Officer and the appeal arising out of the said order was also dismissed.

19. It is argued by learned counsel for the appellants that the defendant

claims the suit property appertaining to Plot No. 1393, area 106 Kari on the basis of sale deed No. 5797 (Ext.F) dated 09.10.1950 which is not with respect to Plot No. 1393 but is with respect to Plot No. 1396, area 48 Kari. In the written statement, it has been pleaded in para 5 that in the said sale deed of 1950 by oversight plot no. 1393 has been wrongly mentioned in the sale deed as Plot No. 1396.

20. It is contended in this regard on behalf of defendants that no suit for rectification of sale deed was filed under Section 26 of the Specific Relief Act by the defendant to correct the plot number. As a matter of fact, they had purchased the property under Plot No. 1396 from Lothan Tirkey and Suleman Kristan who were the recorded tenants as per Ext. 9 Series where the area has been specifically mentioned as 48 Kari.

21. Learned counsel for the respondents has submitted that the suit was dismissed by learned Trial Court specifically on the ground of Section 34 of the Specific Relief Act as the evidence was brought but no relief was claimed for title. Para 13 to 16 of the appellate court judgment is relevant.

FINDING

22. Plaintiff claim title on the basis of settlement in 1950 by the ex-land lord followed by possession, whereas defendants claim it on the basis of sale deed executed by Suleman Christan and Abhiram Oraon.

23. On perusal of the Judgment rendered by the trial Court as well as the first appellate Court this Court is of the view that sound reasons have been assigned for not accepting Hukumnama as a document of title. There was no specific pleading with respect to settlement of land and the said unregistered Hukumnama surfaced for the first time during trial. It was for these reasons and also considering the nature of land being not agricultural, suit was dismissed by the both the learned Courts below.

24. The said settlement was made on abandonment by the previous tenant as per remark column of Hukumnama (Ext-3) without permission from the Deputy Commissioner.

25. This Court does not find any reason to interfere with the well-reasoned findings of both the courts below on this score. 1st substantial question of law is accordingly answered in favour of the defendant/respondents.

26. Plaintiffs have not adduced into any other document of title in support of their claim for relief of recovery of possession. Mutation entries or revenue records do not confer or extinguish title.

27. Mere age of the document is not a conclusive proof of its due execution. At least a prima facie proof is necessary to show that the document is thirty years old, for raising the presumption under Section 90, though it is a rebuttable presumption. The word may in this section indicate that the Court may draw a presumption or it may not draw a presumption. Such presumption has been effectively rebutted on the basis of evidence on record. 2nd substantial question of law is accordingly decided in favour of the defendant/respondent.

Second Appeal stands dismissed with cost.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 19th July, 2024

AFR / AKT/Satendra