

In the Court of Additional Collector, Ranchi

SAR Appeal 24 R-15/07-08

Krishna Murari Goswami & others

Appellant

Versus

Jhirga Oraon

Respondent

SAR Appeal 34 R-15/07-08

Jhirga Oraon

Appellant

Versus

Krishna Murari Goswami & others

Respondent

ORDER

17/
17.03.2008

These two appeals has been filed against the order dated 6.08.2007 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case no129/82-83 TR 90/02-03 by which it was decided to restore the following land in favour of one Pahna Oraon.

Village	Khata	Plot	Area
Booti	179	2160	12 Decimal
		2160	07 Decimal

The case of appellants of appeal no 24 R-15/07-08 states that appellant Krishna Murari Goswami had purchased 12 decimal land in plot no 2160 from Shyamlal Ohdar through registered deed no 2527 dated 7.3.1987. He got his name mutated and paying rent regularly to the state. The appellant no 2 Lala Mahto had also purchased 07 decimal land in plot no 1984 from Sitaram Mahto through registered deed no 10678 dated 29.08.1984 and got his name mutated. He is also paying rent regularly to the state. The land in dispute originally belonged to Lenga Mahto recorded in CS khata no 95. One Sohrai Oraon fraudently got his name entered in RS by having manufactured a Hukumnama dated 30.04.1930 said to have been executed by a fictitious person namely Hazari Ram who had no concern with CS khata no 95. The legal heirs of CS khata no 95, Saheb Ram Ohdar and others filed a title suit no 254/55 against recorded raiyat of

RS khata no 179 Sohrai Oraon. In the said suit, Sohrai Oraon quit claim of the disputed land by filing a compromise petition. Sohrai Oraon clearly stated that proper deed as not executed in his favour. The suit was decreed in favour of plaintiffs on 23.1.1956 and decree was signed on 31.1.1956. After vesting of zamindari, the name of Saheb Ram Ohdar and others was entered in Register II. Saheb Ram and his son Shyam Lal Ohdar constructed residential house over the land in dispute. Later the same was sold to the appellant no 1. The other co-sharers Sitaram Mahto and others also constructed houses for the rent purpose and latter they sold the same to the appellant no 2. Both the transfers made through registered deeds. The appellants are in peaceful possession over their respective houses constructed by their vendors. Subsequently they renovated the houses. The appellants learnt about the lower court case first time on 5.2.2003 when revenue karmachari visited for delivery of possession in connection of SAR case no 129/1982. After due enquiry, the appellants filed SAR appeal 68 R-15/03-04 in the court of Additional Collector, Ranchi which was remanded on 19.7.2005 for fresh hearing. The lower court heard the case and restored the land with an observation that prior permission of Deputy Commissioner was not obtained. The lower court did not apply judicial mind as the houses existing over the disputed land were 40 years old and the case was barred by limitation. Nor did the lower court consider that the land was originally belonged to non tribal in CS record and the respondent had filed restoration case by suppressing the facts of title suit no 254/55. The present respondent is not legal heir of the recorded tenant.

In the memo of appeal of appeal no 34 R-15/07-08, it is stated that the lower court passed restoration order on 6.8.2007. It deffers from the remand order dated 19.7.2005 passed by Additional Collector Ranchi in SAR appeal no 68 R-15/03-04 in which Krishna Murari Goswami and others were appellant and Jhirga Oraon was respondent. It is claimed that therefore the lower court order is totally wrong and inadmissible. The lower court failed to follow the directions of remand order. The lower court did

not mention the name of Jhirga Oraon in entire order sheet and order for delivery of possession issued in favour of Pahna Oraon who died long back. The claim of the appellants of appeal no 24R-15/07-08 is not sustainable because the disputed land is vacant agricultural and kayami land of Jhirga Oraon. The lower court has decided the case erroneously by supporting the claims of Goswami and Mahto. In the concluding portion, the lower court held that Pahna Oraon is entitled to get relief. But the lower court failed to insert the name of Jhirga Oraon as petitioner and Krishna Murari Goswami and Lala Mahto as opposite parties. The lower court held that the successor of recorded tenant is Pahna Oraon but actually the successor of recorded tenant is Jhirga Oraon.

Heard learned counsel for both the parties. The learned counsel of the appellant reiterated the story as stated in memo of appeal. It is asserted that the lower court case is barred by law of limitation. Order was passed in favour of dead person. No successor was impleaded in lower court. It is pleaded that according to judgment reported in JCR(2) 666, where order has been passed against a dead person without noticing the heirs of the deceased, the order itself shall not be sustainable. The learned counsel narrated that nowhere the name of present respondent Jhirga Oraon had appeared. It is also submitted that the nature of land had changed long back. The learned counsel has filed judgments reported in 2004(4) JLJR 109, 2002(3) JCR 121(Jhr), 2002(2) JCR 666, 1994(1) BLJR 648 to prove appellants case.

The learned counsel for the respondent argued that in the sale deeds of the appellants says that the land is vacant. Original court of Sri A.K.Rao passed restoration order on 21.11.2003. The Appellate Court remanded the case to the SAR court. Counter appeal has been filed because a dead person Pahna Oraon got restoration order.

In course of argument, the counsel for the appellant submitted that the lower court order dated 6.8.2007 was in favour of a dead person, Pahna

Oraon, who was supposed to take delivery of possession from the Circle Officer, Ranchi Town.

In another appeal case no 34 R15/07-08, being heard jointly with the present case, Jhirga Oraon has mentioned that the lower court had erred by passing an order in favour of Pahna Oraon as the case was remanded by the Additional Collector through his order dated 19.7.05 in Appeal Case No. 68 R15/03-04 to consider the claims of Krishna Murari Goswami and others and Jhirga Oraon. The above mentioned appellant has further stated that the court below did not consider any of the documents filed by him and did not mention as the petitioner.

Admittedly the impugned order dated 6.8.2007 passed in SAR Case No. 129/82-83 is in favour of a dead person. The order of Delivery of Possession issued vide letter no 785 dated 14.8.2007 contains the name of Pahna Oraon as the petitioner and ordered the Circle Officer, Ranchi to give delivery of possession to him.

In view of the facts stated above, the impugned order dated 6.8.2007 and the letter no 785 dated 14.8.2007 are set aside. Both the appeals are allowed. The case stands remitted to the SAR Court to determine the application u/s 71 A of the CNT Act after issuing notice to the heirs of Pahna Oraon and also to Jhirga Oraon.

It is made clear that there would not be any more appeal in the present court after the SAR Court passes a fresh order.

Dated:- 17.03.2008

Dictated & Corrected by

Sd./-

Additional Collector

Ranchi