

In the Court of Additional Collector, Ranchi

SAR Appeal 72 R15/07-08

Vikram Singh

Appellant

Versus

Sushil Kachhap

Respondent

SAR Appeal 78 R15/07-08

Jagarnath Prasad Choudhary

Appellant

Versus

Sushil Kachhap

Respondent

ORDER

9
11.06.2008

These two appeal cases are filed against the order dated 3,12.2007 passed by Sri Deonish Kiro Special Officer, Ranchi in SAR Case No. 633 of 2005-06 by which the lower court decided to restore the following land to the respondent.

<u>Village</u>	<u>Khata</u>	<u>Plot</u>	<u>Area</u>
Pandra	23	91	1.20 Acres

The case of appellant of Case No.72 R15/07-08 stated that he is in possession of only 12 katha land in disputed plot. The land in question is recorded in the name of Chukam Oraon s/o Late Etwā Oraon in RS Khatian. The recorded tenant surrendered the entire land of khata no 23. Thereafter the then landlord Lal Gopeshwar Nath Shahdeo settled the land to the father of present appellant namely Bidya Singh vide Sada Hukumnama dated 6.2.1941. The landlord realized rent from the father of appellant. It is also described that after getting settlement, Late Bidya Singh constructed his residential house in the year 1960-61. Later he partitioned his entire property among his family members Bikram Singh, Abhay Singh, Bidya Singh and Ajay Singh through registered partition

deed no. 3969 of 1983. After the death of Bidya Singh, his share was given to the mother of the appellant. It is further stated that the appellant allotted 30 decimal of land in his share. All the sharers are paying annual rent to the State. In the year 2004-05 all the legal heirs of Late Bidya Singh sold some portion of the disputed land to Prakash Kumar Gupta, Jagarnath Prasad, Karuna Devi, Prabhawati Devi, Sangam Kumar and Bina Choudhary. It is alleged that all these facts were explained before the lower court and prayer was made for impleading the purchasers as necessary party but the court did not consider it. It is claimed that the case of respondent is barred by limitation. There was a restoration case no. 344/87-88 filed by one Kusia Oraon for restoration of land of Khata No. 44 plot No. 240 which was decided in favour of Kusia Oraon but from the appellate court, the lower court order was set aside. In recent survey operation, Banda Purga was prepared in the name of the appellants father.

The appellants of Case No. 78 R15/07-08 has described in their memo of appeal that the land in question was acquired by Bidya Singh more than 60 years back. In recent survey operation, the draft record of right was prepared in the name of Bidya Singh which was objected by the respondent through Objection Case No. 10 but the same was rejected vide order dated 3.7.1987. After vesting the estate in the State of Bihar, the said Bidya Singh recognized as raiyat and rent was being paid by him. After the death of Bidya Singh, the property was distributed amongst the legal heirs. Vikram Singh, son and legal heir of Bidya Singh sold 3 katha of land to the appellants and Smt. Leela Devi w/o Late Bidya Singh also sold 4 katha of the aforesaid land to appellant Veena Choudhary. It is claimed that the present appellants was not impleaded as a party in lower court in spite of their petition.

Heard learned counsel for all the parties. The learned counsel of the appellants of Case No. 72 R15/07-08 argued the same points and facts as

stated in memo of appeal. It is added that only the respondent filed restoration case in lower court but his brothers Joseph Oraon, Sunil Oraon and Rajesh Oraon were not added as necessary parties. It is stated that the lower court order is Ex-party. The counsel of the appellants of Case No.78R15/07-08 stated that Jagarnath Choudhary purchased 3 katha land from Bikram Singh on 16.9.2004 and Beena Choudhary purchased 4 katha land from Lila Devi w/o Late Bidya Singh on 5.3.2005. Both of them appeared in lower court but were not made parties.

The learned counsel for the respondent argued that the land in dispute is ancestral land of the respondent. SAR Case No. 344/82-83 was filed by one Kasia Oraon against Bidya Singh and 345/82-83 was filed by Kasia Oraon against Arjun Ram. In both the cases, the land was restored. It was argued that rent receipts issued in the name of the appellants after 1980 but before this, rent receipts had been continuously issued in the name of the recorded tenant. It is claimed that there is no house over the disputed land and said Kasia Oraon was not related to recorded tenant.

Coming to the facts of the case, the first transfer of tribal land in the present case took place in 1941 through surrender and in the same year, Lal Yogeshwar Nath Sahdeo allegedly settled the land to Vidya Singh. Later the members of Vidya Singh's family entered into mutual partition and got the same registered in 1988 vide Deed No. 3969.

It is evident that both the surrender and settlement are not registered. The Registration Act provides that all documents incorporating transfer of land valued above Rs 100 must be registered. Such unregistered documents of surrender and settlement are not admissible in evidence. As such the first transfer itself is not in accordance with the provisions of the CNT Act.

According to clause (a) of section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of

a document when the original is shown or appears to in possession. But in the present case only Xerox copies of surrender and settlement have been produced. Even in the lower court, the present appellant had not produced original copies of the document, such documents are of such suspicious nature and cannot be relied.

The appellant's counsel has emphasized the entry of the name of Vidya Singh in 'Banda Parcha' and claimed that the document proved the possession of the petitioner. But 'Banda Parcha' (Kachha Khatian) issued in the name of Vidya Singh does not give the presumption of possession and ownership unless the same is permanently issued.

Counsel for the appellant in SAR Appeal No. 78 R15 of 2007-08 cited two cases 344 and 345 of 82-83 to convince the court the case was hit by 'Res Judicata'. The learned counsel added that former case was filed by Kasia Oraon against Vidya Singh and the latter against Arjun Ram & others. But these orders were not produced in the court.

Counsel for the appellants in both cases submitted that the SAR Case No. 633 of 2005-06 was barred by period of limitation. The surrender and settlement took place in 1941 and restoration case was filed in 2005. But the argument does not hold water because 1941 documents are not registered and they appear to be fabricated ones. The hukumnama was first shown in Badar Case No. 29 of 1985 in survey and settlement operations to get entry in tribal land. Subsequently partition took place in 1988. Obviously the transfer is hardly 20 years old while case was filed in 2005.

In view of the aforementioned facts, there does not appear to be much force in the present appeal. It is hereby dismissed

Dated :- 11.06.2008

Dictated & Corrected by

Sd./-

Additional Collector,
Ranchi.