

In the Court of Additional Collector, Ranchi

SAR Appeal 99 R 15/08-09

Omprakash Midha & others

Appellant

Versus

Ashishan Toppo

Respondent

ORDER

7/22.12.2008 This appeal has been filed against the order dated 4.9.2008 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case no 516/05-06 by which the lower court decided to restore the following land in favour of the respondent.

<u>Village</u>	<u>Khata</u>	<u>Plot</u>	<u>Area</u>
Morhabadi	53	1143, 1244	12 Decimal

This appeal has been filed for an area of 3 katha. The case of appellant states that the land in dispute was recorded in the names of Baya Munda, Silash Munda s/o Sukhram Munda and Bucha Munda, Poulus Munda s/o Ratna Munda who were tenants of the land as defined u/s 6 of the CNT Act. The recorded tenants surrendered the land in favour of the ex-landlord Babu Harihar Prasad Singh through registered deed no. 5864 dated 14.9.1946. The ex-landlord Babu Narbedheshwar Prasad Singh and his mother Pothani Kunwar w/o late Harihar Prasad Singh settled the land to Md. Shakoor vide registered deed no. 7112 dated 18.10.1946. Heirs of Md Shakoor transferred the land to Abdul Halim Khan on 14.7.1947. Abdul Halim Khan sold the land to Rai Bahadur Harakchand Jain, Tarachand Jain and Prakash Chandra Jain through registered deed no. 7254 dated 30.10.1952. Ashok Kumar Jain s/o Harakchand Jain transferred the land to Brij Kumari Midha vide registered deed no. 7429 dated 26.6.1981. Brij Kumari Midha got her name mutated vide case no. 72 R 27 of 1983-84 order dated 19.5.1983. She was regularly paying rent.

Later Brijkumari Midha transferred the land with structure in favour of Ashok Kumar Midha and Amit Kumar Midha s/o Omprakash Midha through registered deed no. 5007 dated 8.5.1985. The purchasers are present appellants who came in possession of purchased area of 3 katha in Plot No. 1143 and 1244 Sub Plot 1143 A and 1244 A. The appellants got their name mutated in Case No. 97 R27 of 1985-86. They also got map sanctioned in RRDA vide Case No. 585/1999 dated 10.7.1999 and constructed pucca building over the land. Holding was also created in Ranchi Municipal Corporation vide Case No. 112/85 dated 16.12.1985 being Holding No. 2023/A3. The appellants are paying land revenue and taxes regularly. It is also stated that one of the heirs of recorded tenant namely Bimal Munda had filed a SAR Case No. 126/96-97 against appellants and other persons which was rejected on 26.9.1997 and no appeal was preferred. It is further stated that in lower court, the present respondent filed SAR Case No. 516/2005-06 claiming that he got the land on the basis of a will executed by the heirs of recorded tenants in the year 1983. It is pleaded that "Will" is also a transfer and permission u/s 46 is necessary but no permission was obtained. Therefore the said Will is vague and illegal. However the land already surrendered on 14.9.1946 when no permission was required. It is claimed that the case of respondent is barred by law of limitation as it was filed after lapse of 62 years. It is also asserted that the case of lower court is hit by the principles of Res-Judicata. All the things are described and accepted by lower court but ordered to restore the land in favour of the respondent.

In spite of registered notice and publication of notice in Newspaper, the respondent did not appear to contest the case.

Heard learned counsel for the appellant who again narrated the facts and points as described in the memo of appeal.

A perusal of the facts of the case reveals that originally the recorded tenants had surrendered the land to ex-landlord Narbadeshwar Prasad

Singh vide registered deed no. 5864 dated 14.9.1946. Subsequently the landlord settled an area of 32 decimals in Plot Nos. 1143 ad 1244 in favour of Md Shakoor who transferred the land to Md Halim. Later the land changed several hands and ultimately came to appellants Ashok Kumar Midha, Amit Kumar Midha and others.

In 1946, the permission of Deputy Commissioner was not required for surrendering the land. As such the surrender was in accordance with the prevailing law and the recorded tenant did not commit any illegality by surrendering the land.

It is also noteworthy that one of the heirs of recorded tenant Bimal Munda had filed a SAR Case No. 126/96-97 against appellants and other persons. But the SAR Court rejected the case and no appeal was preferred. In this way the case suffered from Res Judicata.

In view of the facts mentioned above, the appeal is allowed and the order of the lower court is set aside. Communicate the order to all concerned.

Dated:- 22.12.2008

Dictated & Corrected by

Sd. /-

Additional Collector
Ranchi.