

केस का सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3

23.02.2022

IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI
Miscellaneous Appeal No. 15 R15 of 2016

Madi Munda @ Madi Pahan S/o Late Sham Pahan
resident of Village Tiril, Dela Toli, P.O. - Bariatu,
P.S. - Sadar Distt. Ranchi Appellant

-Versus-

1. Gyan Latika Toppo W/o Hemant Toppo D/o Late Jagarnath Oraon
Residing at (Deed Address) Village - Tiril, Dela Toli,
P.O. - Bariatu, P.S. - Sadar Distt. Ranchi
2. Basant Pahan S/o Sri Madi Pahan
3. Krishna Pahan S/o Birsa Pahan
4. Somra Pahan S/o Late Bhukhla Pahan
5. Amit Pahan S/o Late Jatu Pahan
All resident of Village - Tiril, Dela Toli, P.O. - Bariatu,
P.S. - Sadar, District Ranchi
6. State of Jharkhand Respondents

ORDER

1. Present appeal has been preferred against the order dated 10.10.2015 passed in permission Case No. 1643 R 8 II/14-15, wherein the Learned Rent Suit Deputy Collector, Sadar, Ranchi accorded permission U/s 46 of the Chotanagpur Tenancy Act to the Respondent No.-2, 3, 4 and one Jatu Pahan, the father of Respondent No.-5 to transfer their holding appertaining to Khata No. 64, Plot No. 621, area 05 kathas situated at village Tiril, P.S. - Sadar, Thana No. 195, District Ranchi in favour of Respondent No.-1. Accordingly on the basis of aforesaid order, the Respondent No.-2 to 4 and Jatu Pahan father of the present respondent no.-5 executed a Sale Deed No. 7465/6307 dated 23.11.2015 entered in Book No. 1, Volume No. 407, Pages 395 to 450 for the year 2015 in the office of the District Registrar, Ranchi in favour of the respondent no.-1.

2. In spite of publication of notice in daily newspaper Hindustan on 18.08.2021, no one appeared on behalf of Respondent No.-5, hence after hearing appellant & respondent no 1 to 4 appeal has been fixed for passing final order ex-parte against the respondent no.-5.

[Signature]
23/2/22

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According to the Learned Advocate appearing on behalf of the appellant:-

3. The land under Khata No. 64, Plot No. 621, area 4.21 acres situated at village Tiril, P.S.Ranchi at present P.S.- Sadar, Thana No. 195, District- Ranchi is recorded in the names of Madi Pahan S/o Bhukhla Pahan in the Revisional Survey Records of Right. The aforesaid recorded tenant Madi Pahan died leaving behind three sons, Sham Pahan, Bhukhla Pahan and Birsa Pahan. Sham Pahan died leaving behind four sons, Madi Munda @ Madi Pahan (the appellant), Mondo Munda, Ganuwa Munda and Sukra Munda. As all brothers of Madi Munda did not contribute a single rupee and they did not take interest in the litigation as such they have not been impleaded as parties in the appeal, so alone Madi Munda @ Madi Pahan preferred the appeal.

4. The said Bhukhla Pahan died leaving behinds three sons, Madi Pahan, Jatu Pahan, and Somra Pahan (Respondent No. 4). Madi Pahan died leaving behind one son, Basant Pahan (Respondent No. 2) and Birsa Pahan also died leaving behind Krishna Pahan (Respondent No. 3), while the said Jatu Oraon died leaving behind his son namely Amit Pahan (Respondent No.-5). The Plot No. 621 was evicted from the possession of Sikmi Dakhalkar Lachhu Oron or his heirs and successors and one Sukro Oraon daughter of Shanicharwa Oraon (grand daughter of Lachhu Oraon) filed a S.A.R. Case No. 185/89-90 against the father of the Appellant and others in which restoration application was rejected. One Ravi Kant Bhalla and Chandra Kant Bhalla were in illegal possession of land in respect of Khata No. 64, Plot No. 621, area 30 kathas out of 4.15 acres of village, so the appellant filed a S.A.R. Case No. 149/86-87 in the court of Sri Dinesh Chandra Mishra, Special Officer, S.A.R., Ranchi, who restored the same in favour of the appellant vide order dated 28.10.1992. Accordingly delivery of possession was given to the appellant and one Tulsi Oraon on 01.09.1994 but as the said Tulsi Oraon claimed 15 kathas out of 30 kathas of land, the appellant preferred a S.A.R. Appeal No. 225 R 15/96-97 in the court of Deputy Commissioner, Ranchi which was allowed on 07.02.1997. Accordingly delivery of possession of 15 kathas of land was given to the Appellant on 06.05.1998. As the Appellant alone has borne all the expenses incurred in defending the aforesaid case as well as the appeal,

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hence, he the exclusive owner having absolute right, title and interest or possession over the land of 30 kathas i.e. 50 decimals of Plot No. 621 under Khata No. 64 of village Tiril. The Appellant alone pays rent regularly to the State. He is exercising possession over the same. He has also erected boundary wall and constructed a house over the said 30 kathas of land.

5. The Respondent or their ancestors have sold out more than their proportionate share of land of Khata No. 64 with the tie of land brokers. The Appellant has instituted a Title Suit No. 151/2010 for cancellation of Sale Deed. At present Misc. Case No. 5/2014 is pending in the Court of Sub Judge II, Ranchi. The Respondent No. 1 is a stranger, she is not resident of village Tiril Dela Toli, P.S. Sadar, District Ranchi, The voter identity card furnished by her is also false, fabricated and manufactured for the purpose of grabbing the land of the Appellant. As per the voter identity card, she shown herself as the wife/ daughter of Jagarnath Oraon, but actually Jagarnath Oraon was/is not known in the village as her relative. The Respondent No. 1 furnished false affidavit as well as false documents for the purpose of securing the permission order for purchase from the competent authority.

6. She is resident of Gumla District, so the aforesaid permission has been granted in contravention of clause (a) of the second proviso to sub section (1) of section 46 of the Chotanagpur Tenancy Act. The learned Rent Suit Deputy Collector, Sadar, Ranchi did not enquire into the matter properly and erroneously passed the order on 10.10.2015 grating permission to transfer the land in question in favour of the respondent no.-1

7. Heard the learned counsel for petitioner and respondent no 1 to 4. Respondent no 5 i.e Amit Pahan did'nt appear despite paper publication. Therefore order is being passed exparte for respondent no-5.

On the other hand, according to the Learned Advocate appearing on behalf of the respondents :-

8. The present appeal also barred by the law of limitation, as such this is liable to be dismissed. The appellant by this appeal wants decide the title over the land. He has made prayer for annulment the sale deed and issue order for delivery of possession, hence the prayer of the appellant is bad in law.

9. The land situated at village Tiril, P.S. Sadar, Thana No. 195, District Ranchi being Khata No. 64, Plot No. 621, Area 4.15 Acres recorded in the R.S. Khatian in the name of Madi Pahan son of

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Bhukla Pahan. The recorded tenant Madi Pahan died leaving behind his two sons namely 1. Bhukla Pahan @ Makhla Pahan and 2. Birsa Pahan. The said Bhukla Pahan also died leaving behind his three sons namely 1. Madi Pahan, 2. Somra Pahan and 3. Jatu Pahan. The said Madi Pahan also died leaving behind his only son Basant Pahan. The said Birsa Pahan also died leaving behind his only son Krishna Pahan. The heirs of the recorded tenant are in possession over the land after the death of their ancestors. The heirs of the recorded tenant namely 1. Basant Pahan, 2. Krishna Pahan, 3. Somra Pahan, 4. Jatu Pahan have sold an area of 05 Katha to the Respondent No. 1 namely Gyan Latika Toppo through a registered deed of sale dated 21.11.2015 after obtaining permission from the competent authority vide Permission Case No. 643R811/2014-15, order dated 10.10.2015. The Respondent No. 1 Gyan Latika Toppo after purchase the land came in peaceful possession over the land. She has also paying rent with respect of the same after getting her mutated her name before the Circle Office vide Mutation Case No. 524R27 of 2016-17. The Respondent No. 1 Gyan Latika Toppo after purchasing the land, has also constructed boundary wall over the same. She has also fixed the Iron Gate upon it.

10. The instant appeal suffers from non-joinder of necessary party. All the co-sharers of the appellant are necessary party. This appeal is not maintainable in absence of all the co-sharers. The claim of the appellant that, the land in question was exclusively restored in his favour on the strength of expenses borne by him, is not tenable in the eyes of law. It is settled law that, co-sharers have every right, title and interest in the joint property. The respondent no. 2 to 5 being the legal heirs and successor of the recorded tenants had all right to transfer the land in favour of the respondent no.-1.

11. Heard both the parties. On perusal of materials available on record, I find that, the claim of the appellant that, he the exclusive owner having absolute right, title and interest or possession over the land of 30 kathas i.e. 50 decimals of Plot No. 621 under Khata No. 64 of village Tiril on the basis of expenses borne by him in defending the cases as well as appeals preferred with respect of aforesaid land, is not tenable in the eyes of law. The appellant cannot abridge the right, title, interest of his co-sharer without getting the same declared from the competent court of law.

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Moreover the appellant has not brought on record, any evidence in support of his claim regarding the fact that, the impugned permission has been granted in contravention of clause (a) of the second proviso to sub section (1) of section 46 of the Chotanagpur Tenancy Act.

12. For the reasons aforementioned, I do not find any merit in this appeal. Hence this appeal is dismissed. The impugned order dated 10.10.2015 passed in permission Case No. 1643 R 8 II/14-15 by the Learned Rent Suit Deputy Collector, Sadar, Ranchi is hereby upheld.

Communicate the order to the Rent Suit Deputy Collector, Sadar, Ranchi for information and necessary action.

[Signature]
23/2/22

Deputy Commissioner,
Ranchi.

Dictated and Corrected by

[Signature]
23/2/22

Deputy Commissioner,
Ranchi.