

IN THE COURT OF COMMISSIONER SANTHAL PARGANA

DIVISION, DUMKA

R.M.A. - 386/85-86

Ramanand Sah ----- Appellant

-: Versus :-

Manju Kumari ----- Respondent

ORDER

18/10/2021

This Appeal is preferred against the order dated 22.04.81 passed by Sri K.C. Saha Settlement Officer, Dumka in T.L. Case No. 20 of Mouza - Lodhna.

Learned Counsel for the Appellant submitted that the land of Mouza - Lodhna No. - 36, S.C. - Phuljhari, Anchal - Jama, Dist. - Dumka in respect of J.B. No. - 32, Plot No. - 408, 409, 445 acquired by the father of the appellant Late Kashinath Sah by way of Kurfa Settlement in the year of 1932 from Gantzer's R.T. Bhanumati Dasi remained in physical possession on payment of rent.

Learned Counsel Submitted that between the parties a Title Suit No. - 10 of 1963 instituted in the Court of Additional Collector, Dumka Court No. - III in respect of disputed plot no. 408, 409, 445, of Mouza - Lodhna and after complete of trial the court dismissed the said Title Suit and gave Judgment and decree in favour of the appellant father's Late Kashinath Sah vide order dated 13.04.1965.

18/10

Appellant having peaceful cultivating possession over the settled land. During Tasdik operation a T.L. No. - 20 of Mouza - Lodhna proceeding started against the Kashinath Sah by the Settlement Authority regarding the illegal possession over the plot no. 408, 409, 445 but the A.S.O. enquired the matter regarding the possession of the appellant in respect plot no. 408, 409, 445 and found that appellant father's Kashinath Sah had long standing possession since 27-28 years back over the land, rent also paid by the appellant to the Jamabandi raiyat and also found in Tittle Suit No. - 10 of 1963 the competent court already been passed judgment and decree in favour of Kashinath Sah and forwarded the aforesaid recommendation before the Settlement Officer, Dumka for its approval, but the Settlement Officer with out notice and heard to the appellant suo motto passed eviction order, against the appellant, as the said Tittle Suit is collusive and appellant having illegal possession over the disputed plots.

Learned Counsel submitted that in Mutation Case No.- 7 of 1973 from the court of Circle Officer, Dumka the Plot No.- 408, 409, 445 already been mutated in the name of the appellant and a separate J.B. No. - 32/2 created in respect of land after enquiry and due notice to 16/- Annas Raiyats of the Village, but the court below did not considered the valuable order of competent court and non compliance of notice to the appellant passed suo moto order which is against the provision of natural justice. Hence pray for the order of the court below be setaside for the ends of justice.

Learned Counsel for the respondent submitted that respondent is the present successor of GRT Bhanumati Dasi as she is

6
18/10

adopted by Bhanumati Dasi vide registered adoption deed no. - 1530 dated 07.03.1970 Respondent having peaceful possession over the lands in respect of J.B. No. - 51/32 of Mouza - Lodhna with payment of rent Appellant is rank outsider having no any right tittle over the land in question.

Learned Counsel Submitted that the disputed land in question is non transferrable in S.P.T. Act. 1949 and all the materials of the appellant are wrong, illegal void obinitio. Appeal having no any merit and pray for dismissal.

Heard the learned lawyers of both parties and perusal of documents available on record I find the land Gantzer's J.B. No.- 32 of Mouza - Lodhna No. - 36, S.C. - Phuljhari, Anchal - Jama, Dist.- Dumka stands recorded in the name of Most. Bhanumati (Jiwansat) Jojoy Ramu Kundu, Nidhu Bala Dasi (Jiwan Sat) Jojoy Gangu Kundu. GRT Most.Bhanumati Settled Plot No. - 408, 409, 445 total area 05 Bigha 03 Kattha 05 dhur of land by virtue of kurfa settlement before enactment of S.P.T. Act 1949 in the name of appellant father's Late Kashinath Sah. Appellant having peaceful possession over the disputed Plot No. - 408, 409, 445. I find between GRT Bhanumati and the appellant father's Kashinath Sah a Tittle Suit No. - 10 of 1963 in respect of J.B. No. - 32, plot No. - 408, 409, 445 was instituted in the court of the Additional Collector, Dumka regarding the right tittle and interest of the disputed plots and the competent court dismissed the said Tittle Suit No. - 10 of 1963 of the GRT Bhanumati and declared the appellant had acquired occupancy right over by long possession. In Mutation Case No. - 07 of 1973 the disputed plots already been mutated in the name of this

6
18/10

appellant after enquiry and due notice to 16/- Annas Raiyats of the Village. I find after mutation the name of the appellant a separate Jamabandi No. - 32/2 was assigned, thereafter the appellant paid rent to Government Authority. But during Tasdik operation of survey settlement a T.L. Case No. - 20 of Mouza - Lodhna started against the appellant and the lower court without notice and heard to the appellant passed eviction order regarding the disputed plots. Which is against the natural justice. I find Appellant being the heirs of Settlement holder Kashinath Sah having peaceful continuous possession over the disputed plots Since 1932. Appellant have perfected right, title by way of adverse possession there is no question of eviction it is held by the Hon'able Patna High Court reported in BBCJ 1985 page no. 12 (Mathura Pd. Singh versus Commissioner Bhagalpur Division). The observation of the court below the said Tittle Suit No. - 10 of 1963 was collusive is erroneous finding. The expertly order of the court below is against the natural justice and cryptic, arbitrary and without legal reason. Hence the order passed by the Settlement Officer, Dumka in T.L. Case No.- 20 of Mouza - Lodhna vide order dated 22.04.1981 is here by setaside.

Hence Appeal is Allowed.

Dictated and Corrected by me.


18/10/2021

Commissioner
S.P. Division, Dumka.


18/10/2021
Commissioner
S.P. Division, Dumka