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IN THE COURT OF COMMISSIONER SANTHAL PARGANA
DIVISION, DUMKA

Rev. Misc. Appeal No. - 211/2016-17

Pradip Mahto ----- Appellant

-: Versus :-

SK. Mubarak & Others ----- Respondents

ORDER

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This instant appeal is preferred against the order dated 04.10.2016 passed by Settlement Officer Dumka in his Objection Appeal No. - 62/2012 (Pradip Mahto & Others -versus- SK. Mubarak & Others).

Learned lawyer for the appellant submitted that the land sabik J.B. No. - 7, plot no. - 1353, 1357, 1368 total area - 2 Bigha 6 Katha 17 Dhurs of Mouza - Bhalki No. - 8/12, S.C. - Sukhjora, P.S. - Jarmundi, Dist. - Dumka stand recorded in the name of Sekh Abdul S/o SK. Gulam Rasool in Gantzer's Settlement purcha and also sabik J.B. No. - 46, plot no. - 1147, area - 1 Bigha 14 Katha 18 Dhur stand recorded in the name of Jiwan Mahto S/o Haru Mandal ancestor of appellant.

Learned counsel submitted that due to mutual consent and bonafide benefit, exchange the aforesaid land with connivance of ancestors of both parties filed a Rev. Misc. Case No. - III / 977 of 1926-27 before the S.D.O. Dumka. After verification and submission of report of C.O. Jarmundi exchange was approved by the

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S.D.O. Dumka and accordingly delivery of possession given to them in presence of village raiyats. Since then, both parties remained peaceful possession upon the each other lands and also paying rents till now. During present settlement appellant possession are found upon the plot no. 1607, 1612 corresponding to sabik plot no. 1353, 1357, 1368 and instituted a R.E. Case No. - 24/1982 against the appellant and after enquiry and perusal of documents opened khata in the name of Pradip Mahto and others in respect of J.B. No. - 73 of Mouza - Bhalki. No appeal or revision has been filed by the respondents against the said order of R.E. Case No. - 24/1982, therefore the order become finally and conclusively under law.

Learned counsel submitted that after death of SK. Abdul his son namely SK. Suleman instituted a Title Suit No. - 42/1981 against the appellant before A.S.O. at Camp Nonihat which has been dismissed on 17.06.1981. No appeal or revision has been filed before competent court hence the order became final and conclusive. Respondent again filed Objection Case no. - 26/07 but without considering the documents filed by the appellant A.S.O. allow the petition, there after in Objection Appeal No. - 62/2012 the Settlement Officer without applying his judicial mind dismissed the appeal of appellant.

Learned counsel for the respondents submitted that the present appeal has been filed against two concurrent finding of facts and the appellant besides filling a Civil Title Suit No. - 23 of 2018 challenging the said order of A.S.O. and the Settlement Officer. It is a settled principles of law that the final verdict of a Civil Court in a Civil Suit is binding upon Revenue courts.

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Learned counsel submitted that appellant claiming the entire lands of J.B. No. 7 Area 2 Bigha 6 Katha 17 Dhurs on the basis of alleged exchange but has concealed in the said exchange lieu of only 1 Bigha 14 Katha 18 Dhur of lands, so at no point of imagination the value of the land can be said to be equal which is unjustice in the eye of law.

Learned counsel submitted that when a Civil Suit is pending before the Civil Court for the same subject matter challenging the impugned order of A.S.O. and Settlement Officer this appeal itself is an attempt by the appellant to create situation of clash of jurisdiction between the two courts of competent jurisdiction. Hence pray for dismissal of the appeal.

Heard the learned lawyer of both parties and perusal of documents I find Plot no. 1353, 1357, 1368 total area 2 Bigha 6 Katha 17 dhur in respect of Mouza - Bhalki no. - 8/12, P.S. - Jarmundi, Dist. - Dumka stands recorded in the name of Sekh Abdul, S/o SK. Gulam Rasool and plot no. - 1147 area - 1 Bigha, 14 Katha 18 dhurs in respect of J.B. No. 46 of the same Mouza - Bhalki stands recorded in the name of Jiwan Mahto S/o Haru Mahto in gantzer's settlement purcha. From the perusal of Amin report and order dated 08.03.1927 passed by the Subdivisional Officer Dumka, District - Santhal Pargana in Rev. Misc. Case No. - III / 977 of 1926-27 I find ancestor of both the parties with their mutual consent and bonafide benefit exchanged their lands to each other after proper verification and submission of report of Circle Officer Jarmundi thereafter exchange was approved by the S.D.O. Dumka. There are series of cases viz. R.E. Case No. - 24/12, T. Suit No. - 28/61, T. Suit No. - 42/1981 were / are going in between the appellant and respondents which has been finally decided in same issue and facts.

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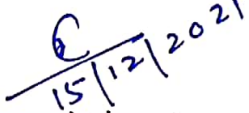
Again and again filling of suit hits the principal of resjudicata I find the court below did not carefully scrutinized properly the order of Title Suit No. - 28/1961, Exchange Case No. - III / 977 of 1926-27, R.E. Case No. - 25/1982 and ignore the valuable order of Competent court also gone through wrong conclusion and reject the prayer of the appellant which is against the provision of settled principle of law, whereas the respondents have not filed any documents to prove their allegation as Civil Suit is pending in any court.

Hence the orders passed by the courts below are hereby set aside and accordingly appeal is allowed.

Appeal is allowed.

Dictated and Corrected by me.


15/12/2021
Commissioner
S.P. Division, Dumka.


15/12/2021
Commissioner
S.P. Division, Dumka