SUPREME COURT OF INDIA

Bandhu Mahto & Anr.

Vs.

Bhukhli Mahatain & Ors.

(C.K.Thakker and L.S.Panta,JJ.,)

14.02.2007

JUDGMENT

Lokeshwar Singh Panta, J.

1. This appeal has been filed by the appellants against the final judgment dated 06.01.1999 of the learned Single Judge of the High Court of Judicature at Patna, Ranchi Bench, Ranchi, whereby the Regular Second Appeal No. 59 of 1983 filed by the appellants challenging the judgment and decree dated 03.03.1983/11.03.1983 of the Additional District Judge, 3rd Court, Dhanbad, in Title Appeal No.20 of 1980 was dismissed.

2. The appellants are the plaintiffs and the respondents are the defendants in Title Suit No.206/74 and 1968/76 and for the convenience, they are referred to as such in this judgment.

3. Briefly stated the facts giving rise to the filing of this appeal are that one Sriram Mahto had two sons, namely, Kinu Mahto and Richu Mahto and one daughter Chandwa Mahatain. Sriram Mahto owned and possessed raiyati lands in Mouza Garga. Chandwa Mahatain (defendant No.7) was married to Churu Mahto, the father of defendant Nos.1 and 2 and grandfather of defendant Nos.3 to 6. As the Defendant No. 7 was married in a poor family, Sriram Mahto, finding his daughter (defendant No.7) in financial stringency, gave some lands to his daughter Chandwa and her husband Churu Mahto with clear understanding that they would not acquire any permanent right therein. Sriram Mahto died much before the publication of the record of rights. During the last cadastral survey operation, the lands belonging to Sriram Mahto had been recorded in raiyati Khatiyan No.2 of Mouza Garga. Chandwa Mahatain and Churu Mahto both died before the survey operation leaving behind four sons, namely, Mani Mahto (defendant No.1), Fadu Mahto (defendant No.2), Chhutu Mahto (defendant No.3) and Bandhu Mahto (defendant No.4). Kinu and Richu, two sons of deceased Sriram Mahto, allowed the sons of their sister to occupy the lands bearing Plot Nos.139, 140, 142, 208, 209 and 243. During the survey operation, the said plots were shown in the names of the defendants in the remark column as "Bhagina Raiyat". After the survey operation, the defendants became solvent and gave up the possession of the plots described in Schedule 'A' of the Plaint and since then Kinu and Richu came in khas (actual) possession of the same and enjoyed the usufruct without any hindrance from any quarter. Kinu and

Richu constructed a tank on Plot Nos.110, 128, 131, 132, 207, 208 and 213. For the construction of tank, they took the lands from Magan Mahto, Churu Mahto, Manga Ram and Chhotu Dobi through oral sale and all the said vendors put Kinu and Richu in possession thereof. One portion where the tank was excavated has been described in Schedule 'C' of the Plaint. Jatali Mahatain, widow of the son of Kinu Mahto, sold her 1/6th share in favour of Babulal Mahto, father of plaintiff No.2. Richu died about 39 years before the filing of the suit, leaving plaintiff No.10 as his sole heir. Defendant Nos.1, 2, 3, 5 and 6 purchased Plot No.139 and some portion of Plot Nos.140 and 142. Defendant No. 3 also purchased a portion of Plot No.245 and those defendants constructed a residential house on Plot No.139. Except the aforesaid lands, other lands including the tank remained in possession of the plaintiffs. The land described in Schedule C and C-1 of the Plaint had all along been shown in possession of the plaintiffs and defendant No.7. However, some time in 1968, the defendants dispossessed the plaintiffs. On these premises, the plaintiffs filed Suit No. 206/74 and 1968/76 on the file of the Court of Munsif, Second Court at Dhanbad for a declaration of title over the lands reflected in Schedule 'A' and 'C-1' of the Plaint and for recovery of khas possession by eviction of the defendant Nos. 1 to 6 from the lands described in Schedule 'C' and 'C-1' of the Plaint and further seeking a decree for permanent injunction restraining the defendants from disturbing the possession of the plaintiffs.

4. The defendants in their written statement pleaded that late Sriram Mahto gave the land in dispute with a constructed house to his daughter Chandwa and son-in-law Churu by way of permanent tenancy and after the death of Chandwa and Churu, their four sons inherited the said property. Their specific defence was that there was no question of giving up possession of Schedule 'A' land by the sons of Chandwa and Churu to Kinu and Richu as claimed by them and the plea of their being in possession of the land was false and fabricated. The claim of Kinu and Richu showing sympathy to their Bhaginas was categorically denied by the defendants. The defendants asserted that their predecessor excavated the tank in question and had been in khas possession of the same. The defendants asserted that late Sriram Mahto had given the lands to his daughter permanently and the sons of deceased Chandwa had constructed their residential house on Plot No. 139 and their names were recorded in the record of rights in respect of the said house. Mani, Chhotu, Khedu, Tahlu and the other defendants in the suit, constructed a residential house on Plot No.140 and as such, all the defendants are in possession of the plot in exercise of their heritable rights. The defendants pleaded that they were misled and duped by the plaintiffs in getting formal sale deed executed in respect of Plot Nos.139, 140 and 142 without paying any consideration by the plaintiffs.

5. On the controversial pleadings of the parties, the trial court framed as many as six issues, which need not be reproduced herefor unnecessarily burdening the records. Issue Nos. 3, 4 and 5 were decided jointly and findings thereon were given in favour of the plaintiffs and against the defendants.

6. Feeling aggrieved, the defendants filed Title Appeal No.20/80 before the First Appellate Court challenging the impugned judgment and decree of the trial court. The learned Additional District Judge, after hearing the parties and re- appreciating the entire evidence on

record, reversed the finding of the trial court and, accordingly, dismissed the suit of the plaintiffs. The plaintiffs, aggrieved, have filed Second Appeal before the High Court. The Second Appeal came to be admitted by the learned Single Judge of the High Court on 31.10.1984 on the following substantial question of law:

> "Having held that the plaintiffs' predecessors-in-rights was the owner of the lands in dispute, was it open to the court below to throw out the plaintiffs' case on the grounds stated by it?"

7. Finally, the learned Single Judge of the High Court came to the conclusion that the reasoning recorded and the conclusion arrived at by the First Appellate Court in dismissing the suit of the plaintiffs do not call for interference in the Second Appeal as the above-said substantial question of law does not involve the facts and circumstances of the case. Hence, the plaintiffs are in appeal before this Court.

8. We have heard the learned counsel for the parties in detail and perused the judgments of the courts below and other material placed on record.

9. Mr. Himanshu Munshi, learned counsel appearing on behalf of the appellants, contended that the First Appellate Court as well as the High Court both have failed to appreciate the findings recorded by the trial court. He submitted that the learned trial court had rightly appreciated the entry made in the main column and the entry made in the remark column in the record of rights wherein predecessor-in-interest of the defendants was shown as under-raiyats (sub-tenants) as their interest in the land was not heritable and, therefore, concluded that the tenancy ended with the death of the predecessor-in-interest of the defendants. He then contended that the findings of the trial court based upon the appreciation of the evidence holding that the settlement between deceased Sriram Mahto on the one hand and his daughter and son-in- law on the other was in the nature of tenancy at will. According to the learned counsel, it is proved on record by the plaintiffs that predecessor-in-interest of the plaintiff sold the plots in dispute to the predecessor-in-interest of the defendants and the defendants after becoming solvent had returned the property given by deceased Sriram Mahto to his daughter to the plaintiffs. Lastly, it was urged that the learned trial court has rightly held that predecessor-in-interest of the defendants were raiyats (sub-tenants) and as such, their rights in the land in dispute was not heritable and, therefore, the defendants ceased to have any rights over the said land after the death of their predecessor-in-interest.

10. On the other hand, Mr. Manoj Saxena, learned counsel appearing on behalf of the defendants, contended that there was no substantial question of law involved in the Second Appeal filed by the plaintiffs and therefore the High Court has to rightly dismissed the appeal being devoid of any merit. The learned counsel submitted that this Court will not be obliged to interfere in the well-reasoned judgment of the First Appellate Court which has been affirmed by the High Court.

11. We have given our careful consideration to the respective contentions of the learned counsel for the parties.

12. It is not in dispute that the deceased Sriram Mahto, father of Kinu and Richu, had given some portion of the land to his daughter Chandwa to extend some financial stability to her and his son-in-law, over which subsequently a residential house was constructed. The claim of the plaintiffs before the trial court was that deceased Sriram Mahto gave some portions of land to Chandwa and her husband with a specific understanding that they would not acquire any permanent right therein, whereas the defendants asserted that no such understanding was in existence and Chandwa and her husband Churu acquired permanent tenancy over the land in dispute. From the evidence on record, it is clear that the plea of conditional settlement of the lands between the deceased Sriram Mahto and his daughter and son-in-law has not been proved by the plaintiffs. It stands proved from the record that Chandwa Mahatain and Churu Mahto had been in possession of the lands described in Schedule 'A' of the Plaint in exercise of their independent rights to the knowledge of all including the plaintiffs. On the death of Churu Mahto, his interest in the said land was inherited by his four sons and his widow Chandwa who surrendered her interest in favour of her four sons. The four sons of deceased Chandwa and Churu remained in possession of the Schedule 'A' property in exercise of their independent rights having equal status as that of original raiyats and as such they acquired permanent indefeasible right over the land described in Schedule 'A' of the Plaint.

13. A close scrutiny of the survey and settlement record would show that the Plots mentioned in Schedule 'A' of the Plaint had been recorded in possession of Bandhu Mahto, Fadu Mahto, Mani Mahto and Chhotu Mahto as "Bhagina Raiyat" in equal share. The survey settlement operation, admittedly, started in the year 1920 and had been finally published in 1925. All the four sons of Chandwa Mahatain were adult and major during the settlement operation. The First Appellate Court, after going through the record of rights, came to the conclusion that Bandhu Mahto, Fadu Mahto, Mani Mahto and Chhotu Mahto had been occupying one house and courtyard along with Gharbari lands in Plot Nos. 139, 140 and 142 and the remaining plots in Schedule 'A' were also in possession of the four sons of Chandwa Mahatain. PW-3 Shashi Bhushan Chaudhary, who was examined by the plaintiffs has admitted in his deposition that deceased Sriram Mahto had got constructed a separate residential house for his son-in-law, Churu Mahto. The evidence of this witness has corroborated the plea of the defendants that much prior to the survey operation Chandwa Mahatain came in possession of Schedule 'A' plots and the family continued in possession of the aforesaid house as well as lands described in Schedule 'A' of the plaint from one generation to other generation without any hindrance from any one. The successors-in-interest of deceased Sriram Mahto have not made any attempt to evict the defendants or their predecessor from the lands in dispute. As regards tenancy, the plaintiffs have introduced three types of pleadings, namely, (i) that soon after the survey settlement operation the ancestor of the defendants became solvent and thereafter they surrendered the land to Kinu Mahto and Richu Mahto, who came into possession of the land; (ii) the plea of surrender by the defendants of the land in dispute; and (iii) the dispossession of the plaintiffs by the defendants from the tank in the year 1968.

14. The First Appellate Court, on scrutiny of the oral and documentary evidence, recorded

clear and positive finding that none of the pleading has been proved by the plaintiffs in their evidence. It has come on record that Bandhu Mahto was the most competent witness to depose in regard to the solvency of the defendants' ancestors or about the surrender of the lands by the defendants, was not examined by the plaintiffs for the reasons best known to them, despite the fact that the witness was present in the trial court for recording the evidence. The defendants and prior to them their predecessor-in-interest remained in possession of the lands, in question, for over a period of 100 years and the house, which was situated on Plot Nos.139 and 140, had been held by them from generation to generation. In view of this evidence on record, the First Appellate Court came to the conclusion that the tenancy held by the defendants will be deemed as permanent tenancy and not tenancy-at-will as alleged by the plaintiffs. The First Appellate Court has found that PW-11, Rijhu Mahto, had failed to prove the dispossession of the plaintiffs from the portion of the land over which tank was constructed.

15. On examination of the reasonings recorded by the First Appellate Court, which are affirmed by the learned Single Judge of the High Court in Second Appeal, we are of the view that the judgments of the First Appellate Court as well as the High Court are well-reasoned based upon proper appreciation of the entire evidence on record. No question of law much less a substantial question of law was involved in this case before the High Court. We do not find any perversity or infirmity in the concurrent findings of fact recorded by the First Appellate Court and affirmed by the learned Single Judge of the High Court to warrant interference in this appeal. None of the contentions of the learned counsel for the plaintiffs-appellants can be sustained.

16. For the above-said reasons, there is no merit in this appeal and it is, accordingly, dismissed. The parties are, however, left to bear their own costs.