

SUPREME COURT OF INDIA

Nazir Ali Mian (Dead) Through Lrs.

Vs.

Dokal Mian

C.A.No.2576 of 2003

(Aftab Alam and T.S.Thakur JJ.)

06.07.2010

JUDGEMENT

Aftab Alam, J.

1. This appeal arises from a suit for declaration of title and confirmation/recovery of possession instituted by one Sukhi Mian, the ancestor and predecessor in interest of the present appellants. The claim of the plaintiff was based on two sada Hukumnamas, allegedly granted by the erstwhile landlord in favour of his father, Bhualdi Mian. In addition to the Hukumnamas, the plaintiff claimed to have perfected his title over the suit lands by adverse possession. The Second Additional Sub-Judge, Giridih, upheld his claim and decreed the suit by judgment and decree dated July 7, 1979 passed in Title Suit No.35 of 71/28 of 79. On appeal by the defendants, however, the Second Additional District Judge, Giridih, reversed that decree and dismissed the plaintiff's suit by a detailed judgment and order dated July 6, 1987 in Title Appeal No.22/79. The plaintiff's second appeal was dismissed by the High Court in limine.

2. In the SLP filed against the High Court judgment, the following question of law was framed on behalf of the appellants:

“Whether the unregistered Hukumnama and the payment of rent against the valid rent receipts is not sufficient enough to establish the raiyati right of the petitioners over the suit land in the light of Section 117 of Transfer of Property Act?”

3. Having regard to the question of law, this Court while granting leave made the following order:

“The legal question formulated depends on the construction of Section 117 of the Transfer of Property Act. It requires consideration.”

4. We have heard counsel for the appellant at some length and we have also carefully examined the judgments of the trial court and the appellate court. We find that the appellate court was fully conscious of the provisions of section 117 of the Transfer of Property Act and has correctly considered the plaintiff's claim based on the two unregistered Hukumnamas. In paragraph 13 of the judgment, the appellate court observed as follows:

“These two Hukumnamas are unregistered document.

Therefore, admittedly by virtue of these two Hukumnamas only no title could have been conferred upon the alleged settlees.

According to the section 117 of Transfer of Property Act lease of agricultural lands can be made orally accompanied with putting the lessee in possession of the land and realizing the rent for the lands.”

5. The court then proceeded to examine whether at the time of execution of the Hukumnama the settlee was put in possession of the suit lands. On a detailed consideration of the evidences adduced by the two sides, it came to hold that there was no evidence that any settlement was made in favour of the plaintiff's father by putting him in possession of the suit lands. The appellate court has given several reasons for holding that the plaintiff (or his father) never came in possession of the suit lands and for not relying on the sada Hukumnamas. The Court pointed out that the first Hukumnama was purported to be made in the year 1318 Fasli that corresponded with the year 1911 of the Christian era. From exhibit B, it was evident that the final publication of the khatian (the record of rights) of village Pratappur, Giridih (where the suit lands are situated) was made on April 4, 1913. The appellate court observed that should the settlee have come in possession over the suit lands by virtue of the Hukumnama, his name would have appeared in the survey records showing him in possession of plot nos.137 and 140. But that was not the position. The Court posed the question, if the settlement of the suit lands was made in favour of Bhualdi Mian by means of the Hukumnama and by putting him in possession of the settled lands, as to why his name did not appear in the khatian. There was no answer to the question from the side of the plaintiff. The court further observed that in case of oral settlement of agricultural land as contemplated under section 117 of the Transfer of Property Act, it was essential to put the settlee in possession of the land.

“There was not a single witness adduced by the plaintiff on this point who could say that on the alleged date of settlement Bhualdi Mian was put in possession. There was not a single rent receipt to show that on the date of settlement any rent was paid by Bhualdi Mian. Therefore, the requirements of law for an oral settlement of agricultural land were not satisfied and the plaintiff could not derive any benefit from section 117 of the Transfer of Property Act.”

6. The appellate court then considered the plaintiff's case based on adverse possession and after a detailed examination, returned a negative finding on his claim.

7. The appeal stands concluded by findings of fact. We find no merit in the appeal. It is accordingly dismissed, but with no costs.