

PATNA HIGH COURT

Bhadar Munda

Vs

Dhuchua Oraon

A.F.O.D. No. 449 of 1964

(Anwar Ahmad and M.P. Varma, JJ.)

18.04.1969

JUDGMENT

M.P. Varma, J.

1. This appeal arises out of an award given by the Second Additional Judicial Commissioner of Chotanagpur at Ranchi in Land Acquisition Reference No. 300 of 1963, made to him under the provisions of Section 30 of the Land Acquisition Act.

2. The short facts of the case are as follows : In village Bhusur, Police-station Ranchi, the Government acquired 380,92 acres of lands for Hatia township. Declaration No. 714 dated the 20th January, 1960 was published in the Bihar Gazette (Extraordinary) of the 21st, January, 1960. In the present case, we are concerned with only 1.82 acres comprised within plot no. 520 of khata no. 17 (Tanr II land). When the Collector made his award in this case and fixed the amount of compensation at Rs. 11,553.36 paise, two claimants appeared before him to claim the compensation money. The first party was Chapru Munda, who later on died and was substituted by his two grandsons Bhadar Munda and Jainath Munda, through their guardian Jisting Munda a brother of Chapru Munda, who are the appellants in this case; and second party was Dhuchuwa Oraon, who is the respondent here. The case of Dhuchuwa Oraon was that he had purchased this plot from Lodo Munda by virtue of a registered sale deed dated the 4th January, 1943 and since that date he was coming in possession of this land, and he paid rent to the State of Bihar after his name was mutated. Before that, he used to pay rent of Rs. 1-8-0 to Lodo Munda who used to grant him receipts. According to him, Chapru Munda or his heirs had no concern with the land in question. It was, therefore, submitted on his behalf that he was entitled to receive the entire compensation money which was to be paid for this acquisition.

3. On behalf of Jisting Munda it was asserted that he had purchased the eastern half of this plot (O. 92 acre) from Lodo Munda under a registered sale deed dated the 8th April, 1942 and had paid Rs. 100/- as consideration for the same. Later on, his elder brother, Chapru Munda, purchased the remaining half from the said Lodo Munda under a registered sale deed dated the 26th January, 1945. Therefore, both these brothers held the entire plot since the time of their purchase. Jisting Munda was all along in Government service at Patna Secretariat and, in his

absence. Chapru Munda used to look after the affairs. He, therefore, claimed the entire compensation money.

4. Before the learned Additional Judicial Commissioner, both parties filed their deeds of title and six witnesses were examined on behalf of Jisting Munda and eight witnesses were examined on behalf of Dhuchuwa Oraon. The learned Additional Judicial Commissioner after a consideration of the evidence before him, came to the conclusion that Dhuchuwa Oraon was the competent person to receive the entire compensation money. Against this order, the present appeal has been filed.

5. Mr. A. K. Chatterjee, learned Counsel for the appellants, has argued that the learned Additional Judicial Commissioner had failed to take into consideration the various registered sale deeds which had been produced on behalf of the parties, and, therefore, he came to a wrong conclusion because of the non-consideration of those sale deeds. He further argued that it was not a proceeding under section 145 of the Code of Criminal Procedure that only the question of possession would be relevant. In the present case it has to be seen that there are three registered sale deeds, all executed by Lodo Munda on various dates. The earliest document is Ext 1/a dated the 8th April, 1942, by which Lodo transferred 0.92 acre of plot no. 520, along with another plot, to Jisting Munda for a sum of Rs. 100/-. So far as this plot is concerned, it was indicated in the sale deed that it was the half area towards the east. The second sale deed in point of time is Ext. B, dated the 4th January, 1943, by which Lodo transferred the entire area of this plot, namely, 1.84 acre, to Dhuchuwa Oraon for a sum of Rs. 73/- only. The third document in point of time is Ext. 1, dated the 26th January, 1945, executed by Lodo in favour of Chapru Munda in respect of the entire area of this plot, namely, 1.84 acre for a sum of Rs. 200/-. It is not the case of any party that any of these sale deeds was a sham transaction or was obtained by fraud, collusion or undue influence, so, taking these three documents at their face value it must be said that Jisting Munda was first in time to acquire half of this plot towards the east and then Dhuchuwa Oraon could purchase only the remaining half of this plot on the western side. He could not have any title to the entire plot, because before his purchase, half of the area had already passed to Jisting Munda. Chapru, perhaps, did not know the earlier situation and he purchased the entire plot much later, that is, on the 26th, January, 1945, under Ext. 1. So, prima facie, he would not be entitled to claim any share in this land which had already passed to the other two purchasers.

6. Mr. S. Sarwar Ali, appearing on behalf of the respondent, has laid great stress on the fact that the title deeds would not determine as to which party was in actual possession of this land, and so the case of each party should be decided with reference to the oral evidence which has been adduced in this case. The learned Additional Judicial Commissioner has summarized the evidence of all the witnesses who had been examined on behalf of both parties and he has given his own comments on their evidence. But when the entire evidence of the witnesses is perused and the same yardstick is applied, I do not think that either party has given a better type of evidence than the other. A. W. 1 Bhaiya Ram Munda, who spoke about the possession of Chapru Munda, stated that Chapru used to pay rent of the land in dispute to Lodo, who himself paid the rent for the entire land to the landlord, but granted no receipt to Chapru. A. W. 3 Jisting Munda was, of course, the party claimant, and he stated that Chapru was his elder brother and lived joint with him. According to him, Chapru used to cultivate the entire land and paid rent to Lodo. This witness was working as a peon in the Patna Secretariat and had retired only a few months earlier. According to his evidence, the land was purchased by the joint family consisting of himself and

Chapru Munda. So, the family unit would be represented by any member of the family. Jisting Munda nowhere claims to have interest only in half the land, apart from Chapru. So, if Jisting Munda or his heirs are not on the record to claim the compensation, I do not think that the claim of the descendants of Chapru would be jeopardised only because of the fact that the earliest sale deed stood in the name of Jisting Munda. It is a matter for the family of Jisting Munda and Chapru Munda to decide between themselves; and as against outsiders, all the members represent one unit of the joint family. He denied the suggestion that he was separate from Chapru. A. W. 5 Sukhnath Singh also spoke, about Chapru's possession. Similarly, A. W. 6 Mahadeo Munda also supported the possession of Chapru for the last 20-22 years. All these witnesses denied the claim of Dhuchuwa Oraon so far as the possession over this land was concerned. On the other hand O. P. W. 1 Dhuchuwa Oraon, of course, spoke about his own acquisition and possession. It was suggested to him that Lodo wanted to sell some other land, but he (Dhuchuwa) collusively got the land in question mentioned in the sale deed. He probed the rent receipts Exts. A to A/10, which were also probed by O. P. W. 4, along with another receipt, Ext. A/11, who was a literate person. These rent receipts do not mention the year nor can they be easily connected with the land in question. They do not bear the thumb impression of Lodo, who is said to be illiterate. Moreover, it is a matter of common experience that printed pucca receipts are not granted by a tenant to another tenant, who is a transferee of some land from him. O. W. 2 Btwa Oraon has spoken about the possession of Dhuchuwa. Similarly, O. W. 3 Kalna Munda spoke about the possession of Dhuchuwa Oraon; but the boundaries of the land given by him do not tally with those given by O. W. 1 or O. W. 4 or O. W. 5 Mangal Oraon. O. W. 6 Mangra Oraon, who is a friend of Dhuchuwa Oraon and who has sold his land to him (Dhuchuwa), admitted towards the end of his cross-examination that the dispute between Dhuchuwa and Chapru had been going on for the last 20 years or so regarding the land in dispute, and that Chapru forcibly cultivated the land in dispute about 20 years ago; and Dhuchuwa had filed a case, but had lost it. So this admission by a witness goes to weaken the case of possession as set up by Dhuchuwa Oraon. It is, therefore, clear from the above analysis of the evidence that neither party gave evidence of such a type which could be accepted at once as a good and reliable piece of evidence concerning possession. There is no case of burden of proof or onus in a dispute like this. Both the parties had to satisfy the Court as regards their title and possession in respect of the land in question. The expression "possession" is a legal term which would not show as to what sort of actual possession the party was exercising. No witness examined on behalf of either party has said that Dhuchuwa, Jisting or Chapru grew such and such crop on the land and harvested the same. In what manner the act of possession was exercised was not stated by any witness. One witness on each side has said that his party was in cultivating possession. So, on a consideration of the oral and documentary evidence available In this case, I think the right conclusion would be that Jisting Munda and his family could get half of the compensation because they had acquired half of the land earliest in point of time. Dhuchuwa Oraon should get the remaining half of the compensation money because he had acquired the remaining half of the land under his sale deed (Ext. B).

7. On behalf of the appellants, an objection was raised that the sale deed of Dhuchuwa Oraon (Ext. B) was not legally proved. The original sale deed was said to have been eaten away by white ants and only two bits of that sale deed were produced in court. Those two bits are already on the record, but they were not formally proved in the court below. In such circumstances, secondary evidence was admissible to prove this document O. W. 7 Janak Narain looking at the certified copy of the sale deed, said that it was copied by Md. Razaque, an extra clerk in the

Registration Office, whose handwriting he knew, and it was copied from the copy in the Registration Register which was in the pen of Baqar Ali. O. W. 8 Kasim Ali further stated that Chapru Munda (which is obviously a mistake for Lodo Munda) had executed a sale deed in favor of Dhuchuwa in his presence and the contents were the same as that of the certified copy. It was then marked as Ext B. It is, however, to be noted from the list of documents admitted in evidence that when Ext. B was admitted into evidence, it was done so without objection. So, in my opinion, when once this document has been marked as an exhibit in the lower court without any objection from the other side, the same question cannot be successfully agitated so far as the mode of proof is concerned.

8. On behalf of the respondent another argument was advanced that Jisting Munda or his sons were not claiming any interest in this land. Jisting Munda died during the pendency of the appeal in this court and thereafter his grandson, Ramrati Munda, was appointed as guardian of the minor appellants, Bhadar Munda and Jainath Munda. It is further apparent from the order-sheet of the lower court that Jisting Munda had also applied to be substituted in place of Chapru Munda, along with his two grandsons. By order dated the 3rd July, 1964, the learned Additional Judicial Commissioner allowed only the names of the minor grandsons of Chapru to be substituted, and not of Jisting Munda. Thereafter, Jisting Munda prayed and his prayer was allowed to the effect that he was made guardian of these two minor appellants. As already observed, Jisting Munda has no interest adverse to the appellants and all of them constitute one joint family. So it does not matter if only one or two members of the family are on the record. The benefit will enure to the entire family consisting of both the branches of Chapru and Jisting.

9. Another argument which was advanced on behalf of the respondent was to the effect that the substitution of the appellants in place of Chapru Munda was barred by limitation. This argument was based on the language of section 53 of the Land Acquisition Act, which lays down that the provisions of the Code of Civil Procedure shall apply to all proceedings before the court under the said Act. It is to be noted that this point was also raised in the court below and the court below, after considering all the matters before it, allowed the substitution to be made. The date of knowledge about the proceeding is the 12th March, 1964 and the date of petition for substitution is the 12th June, 1964. Any way, the question of abatement does not arise in a proceeding like this. In Sanjiva Row's Law of Land Acquisition and Compensation, revised and enlarged by J. P. Singhal, Fifth (1966) edition, at page 808, under item (k), it has been stated that "order 22 of the Code of Civil Procedure cannot be applied to proceedings under Section 18 of the Act..... Once a reference is made under Section 18, the court must make an award under Section 26, irrespective of whether the person, at whose instance the reference has been made, does or does not appear before the court, or fails to produce evidence in support of his objection. A reference proceeding cannot abate. The application of Order 22 of the Code is inconsistent with the very nature and scope of the proceeding under Section 18. If the person, at whose instance the reference is made, dies and no one comes forward to represent him, it is the duty of the Government to supply to the Court the names and addresses of the legal representatives of the deceased claimant to enable the court to issue fresh notice to them under Section 20". Of course, these observations have been made in respect of a proceeding under Section 18 of that Act, but this proceeding is under Section 30. But even in the present proceeding the case of substitution was raised and decided by the lower court and the delay, if any, must be taken to have been condoned. In such circumstances, I do not think this point can be successfully urged on behalf of the respondent. Moreover, in the case of *Mt. Sakalbaso Kuer v. Brijendra Singh*¹, it was observed

that there was nothing inconsistent with the application of the provisions of Order 1, Rule 10, of the Code of Civil Procedure in regard to a reference under Section 30 of the Land Acquisition Act, and that, in that view of the matter, the Court has power to add a person as a party if it appears to the court to be just to do so, and particularly if the Court finds that the presence of such a person may be necessary in order to enable it effectually and completely to adjudicate upon and settle all questions involved in the case. In that view of the matter also, this argument must be negatived.

10. Mr. Sarwar Ali has further contended that the appellate court should be reluctant to reverse the finding of the trial court which had the advantage of marking the demeanour of the witnesses so as to appraise the value of their evidence. But in this case I do not find that the learned Additional Judicial Commissioner has noted about the demeanour of any witness. I may meet this point by simply referring to the observation of their Lordships of the Privy Council made in the case of *Bank of India Ltd. v. Jamsetji A. H. Chinoy*², to the effect that the appellate court would be reluctant to differ from the conclusion of the trial Judge if his conclusion is based on the impression made by a person in the witness box. If, however, the trial Judge based his finding and his opinion of the person on a theory derived from documents and a series of inferences and assumptions founded on a variety of facts and circumstances which, in themselves, offer no direct or positive support for the conclusion reached, the right of the appellate Court to review this inferential process cannot be denied. In the present case, there is not a single sentence in the judgment of the learned Additional Judicial Commissioner about the demeanour of any witness. The case hinged on a clear appreciation of the title deeds of the parties and the evidence of possession as given by the various witnesses. I have already given a summary at some earlier stage to show that the oral evidence of either party is not of superior type over the other. So this objection raised on behalf of the respondent must be left out of consideration, because the appellate Court in the first appeal has to consider and assess the value of the documentary as well as oral evidence as produced by the parties in the trial court.

11. In the result, this appeal succeeds in part. The award of the learned Additional Judicial Commissioner is modified to this extent that half of the compensation money would be paid to the appellants on behalf of the joint family, and the other half would be paid to Dhuchuwa Oraon. In the circumstances of the case, there will be no order as to costs.

Anwar Ahmad, J.

12. I agree.

Appeal partly allowed.

Cases Referred.

¹ AIR 1967 Pat 243

² AIR 1950 PC 90