

State of Jharkhand and ors. Vs. Smt. Gulbasi Devi and ors.

State of Jharkhand and ors. Vs. Smt. Gulbasi Devi and ors.

SooperKanoon Citation : sooperkanoon.com/515005

Court : Jharkhand

Decided On : Jan-11-2005

Reported in : 2005(1)BLJR214; [2005(1)JCR506(Jhr)]

Judge : S.J. Mukhopadhaya, A.C.J. and; R.K. Merathia, J.

Appeal No. : L.P.A. No. 841 of 2003

Appellant : State of Jharkhand and ors.

Respondent : Smt. Gulbasi Devi and ors.

Advocate for Def. : Rajeev Ranjan Tiwary, Adv.

Advocate for Pet/Ap. : B.S. Lal, AAG

Judgement :

ORDER

1. The petition at flat 'A' has been filed for substitution of the legal heirs of deceased respondent, Vishwanath Ram, who died just before filing of this appeal on 31st July, 2003, leaving behind Kusumbhar Devi (window), Bhola Ram, Pradip Ram (sons) and Chand Devi (daughter).

2. It is stated that Vishwanath Ram died just before filing of this appeal, so his heirs were impleaded as respondent Nos. 4-7 to the memo of appeal. But as they were not parties before the learned Single Judge, leave has been sought to

implead them as party-respondent in the present appeal.

3. A caveat No. 176/2003 at flat 'C' has been filed by Smt. Gulbasi Devi and Mahendra Prasad Gupta, who were the writ petitioners before the learned Single Judge and they have not disputed the fact that Vishwanath Ram died after the judgment was delivered in the writ petition, but prior to preferring of this appeal.

4. Mr. Rajeev Ranjan Tiwary has also appeared on behalf of Nagendra Prasad Gupta, who was another writ petitioner before the learned Single Judge.

5. Having heard the learned counsel for the parties, we allow the petition for substitution and thereby the heirs of the deceased respondent, Vishwanath Ram, namely, Kusumbhar Devi (widow), Bholu Ram, Pradip Ram (sons) and Chand Devi (daughter), are substituted in his place as respondent Nos. 4, 5, 6 and 7 to the memo of appeal, as have already been shown in the cause title.

6. I.A. aforesaid is disposed of.

I.A. No. 2648 of 2003

7. This appeal has been preferred by the appellant-State of Jharkhand-after delay of sixty-six days. The petition at flag 'L' shows sufficient cause to condone the delay.

8. Having heard the learned counsel for the parties and being satisfied with the cause shown, we condone the delay in filing this appeal.

9. IA. aforesaid is disposed of.

L.P.A. No. 841 of 2003

10. This appeal has been preferred by the State against the judgment and order dated 31st July, 2003. passed in CWJC No. 2216 of 1994R, whereby the learned Single Judge quashed the order dated 23rd July, 1994, passed by the Deputy Commissioner, Garhwa, in Misc. Case No. 40/1993-94. By the aforesaid order dated 23rd July, 1994, a jamabandi, which was initially created in the names of the vendors of the writ petitioners and thereafter in the names of the writ petitioners,

was cancelled.

11. The main plea taken by the learned counsel for the State is that jamabandi having been created in the names of the writ petitioners by playing fraud and in collusion with the karamchari of the Circle Office, who was the husband of Smt. Gulbasi Devi, writ petitioner No. 1/ respondent No. 1 herein, it was rightly cancelled after initiation of a proceeding being Misc. Case No. 40/1993-94.

12. It appears that Misc. Case No. 40/1993-94 was initiated at the instance of certain villagers including Vishwanath Ram, who died after the judgment was passed by the learned Single Judge and whose heirs have now been substituted. On hearing the learned counsel for the appellant-State and the learned counsel appearing on behalf of the respondents-writ petitioners and the nature of the order which this Court intends to pass, it is not necessary to hear the heirs of the complainant, Vishwanath Ram (deceased) at this stage. It may be mentioned that Vishwanath Ram (deceased) and others were not claiming right and title in respect of the land in question. It was claimed to be a Government land-gaur-mazurua khas.

13. It is a settled law that creation of jamabandi does not create any right and title in favour of one or other, nor cancellation of jamabandi extinguishes the right and title of any person, who has valid right and title over the land it is made taking into consideration possession of a person over the land. The person in whose name jamabandi is created only becomes entitled to pay rent, his name having been recorded in Register II on the basis of an order of jamabandi, no person can be given possession, nor on cancellation of a jamabandi, any person can be dispossessed of a land without a valid order of a Court of competent jurisdiction/competent authority. In this respect, the Division Bench decision of Patna High Court rendered in the case of Sitaram Choubey and Ors. v. The State of Bihar and Ors., reported in 1993 (2) PLJR 255 may be referred to.

14. In the present case, the writ petitioners-respondents cannot claim any right and title over the land in question on the basis of jamabandi as it was created in their favour, nor the appellant-State can claim such right and title on the basis of the order of cancellation of jamabandi. On the basis of an order of creation or

cancellation of jamabandi neither the writ petitioners-respondents, nor the appellant-State whoever is in possession of the land in question can be dispossessed. In the circumstances, this Court is not inclined to determine the question whether the jamabandi was rightly created or it was rightly cancelled, as it will not affect the right and title of anyone or other party. The aggrieved person, if so chooses, may move before a Court of competent jurisdiction for declaration of right, title and delivery of possession. It will be also open to the competent authority to pass any appropriate order in accordance with, law after notice to the affected party, as observed by learned Single Judge.

15. In view, of aforesaid finding and as we have not decided the claim of the parties on merit, none of the parties can claim right and title on the basis of the judgment passed by the learned Single Judge.

16. With these observations/directions, this appeal stands disposed of. Appeal disposed of.